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**Writ of Certiorari.**

Filed: March 11, 1935.

*New Jersey, ss.:* The State of New Jersey, to  
County Clerk of the County of Es- 10  
sex, Essex County Court of Com-  
(L.S.) mon Pleas, and Mary Jasnig:

GREETING:

We being willing for certain reasons to be cer-  
tified of and concerning a certain determination  
of facts and rule for entry of judgment entered  
on the 14th day of January, 1935 by the Honora-  
ble Daniel J. Brennan, Judge of the Essex Coun-  
ty Court of Common Pleas, in a certain proceed- 20  
ing brought on behalf of Mary Jasnig, petitioner  
in compensation and appellee in the Essex Coun-  
ty Court of Common Pleas, against Charles A.  
Winter, executor of the estate of Wolfgang Ma-  
rie Winter, deceased, respondent in compensation  
and appellant in the Essex County Court of Com-  
mon Pleas, for the determination and recovery  
of compensation under an act of the Legislature  
of the State of New Jersey, entitled "An Act pre-  
scribing the liability of an employer to make com- 30  
pensation for injuries received by an employe in  
the course of employment, establishing an elec-  
tive schedule of compensation and regulating pro-  
cedure for the determination of liability and com-  
pensation thereunder", approved April 4, 1911  
and the acts amendatory thereof and supplement-  
al thereto, we command you, the said County Clerk  
of the County of Essex, Essex County Court of  
Common Pleas, and Mary Jasnig, that the said  
determination of facts and rule for entry of judg- 40

*Writ of Certiorari.*

ment, together with a transcript of the evidence and all proceedings for the making of the same and all things touching and concerning the same as fully and entirely as before you they remain, or are in your custody and control, you do certify and send together with this writ to our Justices of our Supreme Court of Judicature, at Trenton, this 7th day of May 1935, that therein may be caused to be done what of right and according to law ought to be done.

Witness, the Honorable THOMAS J. BROGAN,  
Chief Justice of our said Supreme Court, at Trenton, this 9th day of March, 1935.

FRED L. BLOODGOOD,  
Clerk.

20 Cox & WALBURG,  
Attorneys.

Allocatur.

This writ is allowed. Let it be sealed.

CHARLES W. PARKER,  
Justice of the Supreme Court.

30

40

## Return to Writ.

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

I, Daniel J. Brennan, Judge of the Court of  
 Common Pleas in and for Essex County, New  
 Jersey, and John H. Scott, Clerk of the Court of  
 Common Pleas in and for Essex County, New  
 Jersey, Do Hereby Certify and Return to the  
 Supreme Court of Judicature of the State of New  
 Jersey, the judgment of the Court of Common  
 Pleas and Determination and Award and Pro- 10  
 ceedings made and given by the Workmen's Com-  
 pensation Bureau of New Jersey, Department of  
 Labor, in the Compensation Proceedings of Mary  
 Jasnig, Petitioner vs. Charles A. Winter, Execu-  
 tor of the Estate of Wolfgang Winter, respondent,  
 together with all things touching and concerning  
 the same as by the within writ to us directed and 20  
 as commanded.

In Witness Whereof we have hereunto set our  
 hands and Official Seal, this 25th day of March,  
 A. D. 1935.

DANIEL J. BRENNAN,  
 Judge of the Court of Common Pleas,  
 Essex County, New Jersey.

JOHN H. SCOTT,  
 Clerk of the Court of Common Pleas, 30  
 Essex County, New Jersey.

**Employee's Claim Petition for Compensation.**

NEW JERSEY DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU.

Trenton, N. J.

*Employee's Claim Petition for Compensation.*

10

MARY JASNIG,  
Petitioner,

vs.

WOLFGANG MARIE WINTER,  
Respondent.

20

Received at Trenton Nov. 2, 1932.

Claim Petition No. ....

Date of Accident ....., 19..

If known, state name of insurance company....

Attorney for Petitioner: Frank Pascarella, 1  
Westwood Ave., Westwood, N. J.

*To the Workmen's Compensation Bureau of New  
Jersey:*

30

The claimant respectfully alleges the following  
facts:

1. What is your name? Mary Jasnig.
2. Where do you live? 173 East 108th Street,  
New York City.
3. Sex Female.
4. Age.....
5. Married. No.
6. By whom were you employed at the time of  
the accident? (Give name and business ad-

40

*Employee's Claim Petition for Compensation.*

- dress) Wolfgang Marie Winter, 90 Kent Place, East Orange, New Jersey.
7. What was the business of your employer?  
Housewife.
  8. Did you give written notice to your employer at the time you were hired, or later, that the Compensation Law should not apply to you? No. 10
  9. Did you receive such notice from your employer? No.
  10. Did your employer have knowledge of your accident? Yes.
  11. Did you notify your employer of your accident? Yes.
  12. If so, on what date? March 1, 1932 and May 24, 1932.
  13. Have you made claim to your employer for compensation? Yes. 20
  14. What was your regular occupation, and what kind of work were you doing at the time of the accident? Dressmaker.
  15. When did the accident happen? March 1, 1932, 3:30 A. M.
  16. Where did the accident happen? 90 Kent Place, East Orange, N. J.
  17. What was the nature of the accident, and how did it happen? As part of employment petitioner resided at home of employer and early in the morning of March 1, 1932, while going to the bathroom, petitioner fell down a stairway and received injuries complained of. 30
  18. On what date were you compelled to stop work because of the injury? March 1, 1932.
  19. On what date were you well enough to work again? Have not been able to work as yet. 40

*Employee's Claim Petition for Compensation.*

20. If still disabled, on what date do you think you will be able to work? July 1, 1933.
21. Give nature of any injury from which you will recover? Contusions and bruises.
22. If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. Fractured left wrist, causing loss of use of hand and arm—fractured spine.
- 10
23. Were your wages fixed by piece-work? No.
24. If so, what was your average weekly wage?—
25. If wages were fixed by the hour, state rate per hour. No.
26. Give number of hours in an ordinary working day. ....
- 20 27. Give number of days in an ordinary working week. Six.
28. State the amount of weekly wages. \$28 per week.
29. How much money have you received from your employer as compensation (not medical aid) since your accident? None.
30. Has your employer promised to pay you any compensation? No.
31. If so, how much? —.
- 30 32. Was medical aid required? Yes.
33. Did you receive any medical, surgical or hospital service? Yes.
34. Did you request your employer to furnish these services? Yes.
35. Were they furnished? No.
36. If so, between what dates? —
37. If not, what sum did you expend for medical, surgical or hospital services? \$350. to date.
- 40

*Employee's Claim Petition for Compensation.*

38. Give name and address of physician and hospital. Memorial Hospital, East Orange, N. J., 3 days. Bellevue Hospital, N. Y. City, 14 days. Hospital for Joint Diseases, 14 days. Dr. Carlucci, 212 E. 68th St., N. Y. C. Dr. Finkelstein, 123 W. 86th St., N. Y. C. Dr. Hirshfield, 1843 Madison Ave., N. Y. C. 10
39. What other facts are there which you believe important?
40. Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? Yes.
41. If you are unwilling, state reasons.

Your Petitioner therefore prays that your Honorable Bureau will determine the amount of compensation due to your Petitioner from the said defendant, under the act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the Acts supplemental thereto and amendatory thereof, and that your petitioner may be awarded his costs in this proceeding, and such other or further relief as may be proper. 20

And your petitioner will pray, etc.

MARY JASNIG,  
(Petitioner)  
173 E. 108th Street, N. Y. City.  
(Address) 30

*Employee's Claim Petition for Compensation.*

State of New York }  
 County of New York }<sup>ss.:</sup>

10 Mary Jasnig of full age, being duly sworn according to law, on her oath deposes and says: That she is the petitioner named in the foregoing petition; and that she has read the same and is familiar with the contents thereof; and that the matter and things therein set forth are true according to the best of his knowledge and belief.

MARY JASNIG,  
 Petitioner.

Subscribed and sworn to before me, this 24th day of October, 1932, at New York City, N. J.

Master in Chancery of New Jersey.

20 (This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Petition filed in this cause.

W. E. STUBBS.

30

40



*Respondent's Answer to Employee's Claim  
Petition.*

11. Did you receive notice of this accident from the Petitioner? No.
12. If so, on what date?
13. Has any claim for compensation been made? Yes.
- 10 14. What was the Petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Petitioner was doing some sewing work for respondent for a day.
15. When did the accident happen? March 1, 1932, 3:00 A. M.
16. Where did the accident happen? 90 Kenwood Place, East Orange, N. J.
- 20 17. What was the nature of the accident, and how did it happen? Petitioner was staying at respondent's house over night with permission of respondent, and according to statement of petitioner to respondent, she was injured by falling down the stairs while going from her bedroom to the bathroom about three o'clock in the morning of March 1, 1932.
18. On what date was the petitioner compelled to stop work because of injury? Do not know.
- 30 19. On what day was the injured well enough to work again? Do not know.
20. If still disabled, on what date do you estimate he will be able to work? Do not know.
21. Give your understanding of the nature of any injury from which he should recover? Do not know.
- 40 22. Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member or impairment of any physical organ. Ex-

*Respondent's Answer to Employee's Claim  
Petition.*

- plain fully. Have no knowledge of any permanent injury to petitioner.
23. Were the wages fixed by piece-work? No.
24. If so, what was the average weekly wage of the injured?
25. If wages were fixed by the hour, state rate per hour. Petitioner was employed at four (\$4.00) dollars per day. 10
26. Give number of hours in an ordinary working day. Seven.
27. Give number of days in an ordinary working week.
28. State the amount of weekly wages.
29. How much money have you paid the injured as compensation (not including medical aid) since the accident? Nothing.
30. Have you promised to pay compensation? No. 20
31. If so, how much?
32. Was medical aid required? Yes.
34. Were you requested to supply the necessary medical service required by law? No.
35. Did you furnish this service? Respondent called the doctor, who ordered petitioner removed to hospital.
36. If so, between what dates? March 1, 1932. 30
37. If not, give reason for failure to do so.
38. Give name of physician and hospital rendering service at your direction. Respondent called Dr. James H. Wilson, who ordered petitioner removed to Orange Memorial Hospital, Orange, N. J.
39. What other facts are there which you believe important? If you deny that compensation is payable in this case explain fully your reasons for this conclusion. Respondent 40

*Respondent's Answer to Employee's Claim  
Petition.*

denies that compensation is payable for the reason that petitioner's employment was casual and that her injuries were not the result of an accident arising out of and in the course of her employment with respondent.

10

MARY WINTER,  
Respondent.

90 Kenwood Place, East Orange, N. J.

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

20

Mary Winter of full age, being duly sworn according to law, on her oath deposes and says: That she is the respondent named in the foregoing answer to claim petition; that she has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

MARY WINTER,  
Respondent.

Subscribed and sworn to before me, this 23rd day of November, 1932, at Orange, N. J.

30

ANNA E. COX,  
A Notary Public of N. J.  
My commission expires Aug. 8, 1934.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

40

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Answer filed in this cause.

W. E. STUBBS.

**Petition.**

Filed May 31, 1934.

NEW JERSEY WORKMEN'S  
COMPENSATION BUREAU.

23701

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MARY JASNIG,  
Petitioner,

vs.

WOLFGANG MARIE WINTER,  
Respondent.

---

10

On Petition  
for Compen-  
sation.

To: CHARLES R. BLUNT, ESQUIRE, Commissioner of  
Compensation. 20

The petition of Charles A. Winter, Executor of  
the Estate of Wolfgang Marie Winter, deceased,  
respectfully shows unto your Honor that:

1. On or about the 2nd day of November, 1932,  
a petition was filed in the Workmen's Compen-  
sation Bureau wherein Mary Jasnig is petitioner  
and Wolfgang Marie Winter was respondent;  
wherein compensation was claimed by reason of 30  
injuries alleged to have been sustained by the said  
Mary Jasnig under the Workmen's Compensation  
Laws of the State of New Jersey.

2. That the said Wolfgang Marie Winter died  
on the 7th day of July, 1933, before final hearing  
on said petition leaving a Last Will and Testa-  
ment, wherein your petitioner was named Execu-  
tor.

3. The said Will was probated and your peti- 40

*Petition.*

tioner qualified as Executor on the 18th day of July, 1933 and desires to appear and defend the said claim as the personal representative of the said Wolfgang Marie Winter, deceased.

- 10 4. Your petitioner therefore prays that an order be made suggesting the death of the said Wolfgang Marie Winter on the record of the said cause, and substituting your petitioner in his capacity as Executor of the Estate of the said Wolfgang Marie Winter, deceased, as the respondent therein.

Your petitioner will ever pray, etc.

CHARLES A. WINTER,  
Petitioner, Executor.

Dated: August 22, 1933.

- 20 State of New Jersey }  
County of Essex } ss.:

Charles A. Winter, being duly sworn, according to law, deposes and says: That he has read the foregoing petition and that the matters and things therein contained therein are true to the best of his knowledge, information and belief.

CHARLES A. WINTER,  
Executor.

- 30 Sworn and subscribed to before me  
this 22nd day of August, 1933.

Anna E. Cox,  
A Notary Public  
of N. J.

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Petition filed in this cause.

W. E. STUBBS.

**Order.**

Filed May 31, 1934.

NEW JERSEY WORKMEN'S  
COMPENSATION BUREAU.

#23701

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 MARY JASNIG,  
 Petitioner,

vs.

 WOLFGANG MARIE WINTER,  
 Respondent.
 

---

10

 On Petition  
 for Compen-  
 sation.

On reading and filing the petition and affidavit of Charles A. Winter, Executor of the Estate of Wolfgang Marie Winter, deceased, it is on this 29th day of August, 1933,

20

ORDERED, that the death of said Wolfgang Marie Winter deceased, be and the same is hereby suggested upon the records of the above entitled matter, and it is further

ORDERED, that the said Charles A. Winter, Executor of the Estate of Wolfgang Marie Winter, deceased, be and he is hereby substituted as the personal representative of the said Wolfgang Marie Winter, deceased, for the purpose of defending as representative the claim filed in the above entitled matter.

30

CHARLES E. CORBIN,  
 Deputy Commissioner.

I, W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau, hereby certify the foregoing to be a true copy of the Order filed in this cause.

40

W. E. STUBBS.

**Testimony.**

NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU.

Newark, Essex County District.

10

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 MARY JASNIG,  
 Petitioner,

vs.

 WOLFGANG MARIE WINTER,  
 Respondent.
 

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January 9, 1934.

 20 Before—Honorable CHARLES E. CORBIN,  
 Deputy Commissioner.

## APPEARANCES:

FRANK PASCARELLA, Esq., for the Petitioner.

WILLIAM P. BRAUN, Esq., by WILLIAM  
McENROE, Esq., for the Respondent.

30

Mr. McEnroe: This case was started on August 1st. The only testimony taken was the partial testimony of Mary Jasnig, the petitioner. It is stipulated by attorney for the petitioner and attorney for the respondent that that testimony be stricken out and that the case now be started from its beginning, and it is further stipulated that the question of liability will first be tried. If there is liability found then the testimony will be taken later as to the damages, and, of course, if there

40

*Joseph Pfeiffer—Direct.*

is no liability found there will be no necessity for further testimony.

Mr. Pascarella: In this case, testimony was taken by stipulation of a witness, Joseph Pfeiffer, who was about to leave the jurisdiction of the Court.

The Court: That is part of the record.

Mr. McEnroe: May it please the Court, I have 10  
this to say with respect to the testimony. I object first of all to the entire testimony being offered at this time. My next objection to its being read into the record at this time is that there are several objections throughout the testimony and I, therefore, feel that because of the nature of this case and in strict accordance with the regular rules of practice, that the entire testimony should be read into the record in its proper order and these objections decided by your Honor, inasmuch 20  
as they could not have been passed upon before the regular examiner.

The Court: I will have that done. Do you wish to present the deposition at this time?

Mr. Pascarella: I shall present it at this time.

The Court: Or do you wish to present it later?

Mr. Pascarella: At this time.

The Court: That is entirely up to you. Have 30  
you a copy of this for me?

Mr. Pascarella: Yes, here is the original.

Mr. McEnroe: Will you designate on the record the title of this testimony—that is, exactly what it is.

Mr. Pascarella: This is the testimony of Joseph Pfeiffer, produced as a witness for the petitioner. The testimony was taken before William C. O'Brien, Supreme Court Commissioner of New Jersey at the office of William P. Braun, Esq., 60 Park Place, Newark, New Jersey, on the 19th 40

*Joseph Pfeiffer—Direct.*

day of October, 1933, in the presence of Frank Pascarella, Esq., counsel for the petitioner, and William P. Braun, Esq., counsel for the respondent. "Joseph Pfeiffer, being called as a witness on behalf of the petitioner, being first duly sworn, testified as follows: Direct-examination by Mr. Pascarella. Q. Are you related to Wolfgang Marie Winter? A. Well, a distant relative.

10

Q. And you live with Mrs. Winter during the months of February and March, 1933? A. Yes, I did.

Q. Now, did you see Miss Jasnig work on the 29th of February, 1932? That is, the day before she was hurt? A. Yes, I saw her working.

Q. What work was she doing in the house? A. Well, she was sewing on a dress.

20

Q. In which room of the house was she sewing? A. Well, it was a bedroom.

Q. On which floor? A. The second floor.

Q. Did she work there the whole day? A. Yes, she did.

Q. Had you seen Miss Jasnig work there any other day? A. Yes, I did.

Q. When? A. That past week.

Q. And was she doing the same work? A. Yes, she was doing the same work.

30

Q. How many days of the past week did she work for Mrs. Winter? A. I think it was two days.

Q. Consecutively, one day after the other? A. Well, yes.

Q. At lunch, on the 29th of February, did she have lunch there? A. Yes.

Q. Did she have breakfast there? A. Yes.

Q. Did she have dinner there? A. Yes, she did.

40

Q. What time of the morning did Miss Jasnig come there on the 29th of February? A. Well, I

*Joseph Pfeiffer—Direct.*

remember we didn't have breakfast together. It must have been after eight o'clock.

Q. The previous time that Miss Jasnig worked there did she have all her meals with Mrs. Winter? A. Yes, she did.

Q. Did she spend the night there, too? A. Well, I never saw her sleeping there.

Q. But when she worked there the two days consecutively, did she sleep one of the nights? 10

A. I think she did, yes.

Q. Were you present when Miss Jasnig left after working the two days of the previous week?

A. Yes.

Q. Did Miss Jasnig and Mrs. Winter have any conversation about when she was to return to work? A. When Miss Jasnig left I remember she said at the door, "I will be back next week."

Q. She told that to Mrs. Winter? A. Yes. 20

Q. But didn't fix the day? A. No, there was no fixing of a day or date.

Q. Did you get any telephone conversation the night before Miss Jasnig came to work, the day when she was hurt, did you get a telephone conversation from any one about Miss Jasnig coming to work? A. Yes, I think I did.

Q. You got a telephone call? A. Yes.

Q. Do you know who spoke to you? A. I think it was Miss Doris Meyer. 30

Q. Miss Doris Meyer, what did she say to you?

Mr. McEnroe: There is an objection there.

Mr. Pascarella: There is an objection.

Mr. McEnroe: On the ground that it is a conversation with a third party and on the ground that it is purely hearsay so far as the respondent is concerned. Furthermore, no proper foundation has been laid.

Mr. Pascarella: If your Honor please, this per- 40

*Joseph Pfeiffer—Direct.*

son was positively the one to whom it is alleged this person spoke. I think you have the reverse of the ruling in connection with telephone conversations, when you want to identify the person on the other end, then you have to lay a foundation, but this is a call from Miss Doris Meyer, which was received in the house of this respondent in connection with Miss Jasnig's employment. That is just the reverse of the example that is cited by counsel for the respondent. Here is a case where a call was made to the house of the respondent, and where someone answered the phone and where they recognized the voice of the party who was speaking.

10  
20  
Mr. McEnroe: If it please the Court, I would like to make myself clear on this point, this is not the reverse of the position which I stated at all. The question has come up before the upper courts many times in connection with telephone conversations, because of the fact that it is difficult to lay down hard and fast rulings, and in order to properly enter the contents of a telephone conversation on the record, it must be established first or it must be found—

The Court: Well, without going into any further discussion on the matter it would appear to me that this is hearsay testimony.

30  
Mr. McEnroe: It is hearsay because of the fact that he said, "I think it was Miss Doris Meyer."

The Court: The witness is not a party.

Mr. McEnroe: The witness is not a party.

Mr. Pascarella: The witness is not a party, no.

The Court: I will sustain the objection on the ground that it is hearsay.

40  
Mr. Pascarella: I take an exception on the ground that hearsay is admissible in a proceeding of this kind. It has been so held in the Uvaldi

*Joseph Pfeiffer—Direct.*

Paving Company case, and also in the Nagel Packing Company case, 160 Atlantic, 776, that hearsay evidence is admissible in a hearing of this nature.

It is true that you can't base your decision on purely hearsay evidence, but you can allow this hearsay evidence in with the good and competent evidence, but you can't eliminate it.

The Court: I sustain the objection. 10

Mr. Pascarella: Exception.

“By Mr. Pascarella: Q. Do you know whether Miss Jasnig and Mrs. Winter had made any arrangement about coming to work and the time? A. No, there was no arrangement made.

Q. Now, this conversation—this telephone call was made at what time? A. I think it was five o'clock in the afternoon.”

Mr. Pascarella: And then Mr. Braun says that his objection runs to all this conversation. 20

“By Mr. Pascarella: Q. You were in the house at the time the telephone rang? A. Yes, I was.

Q. Did you answer the telephone? A. Yes, I did.

Q. Why did you answer the telephone?”

Mr. McEnroe: Objected to on the ground that that it is immaterial.

Mr. Pascarella: Well, the call came in and he transmitted the message in the house. 30

The Court: I will allow the answer.

Mr. Pascarella: (Reading) “A. I usually answered the telephone.

Q. What was the condition of Mrs. Winter's hearing? A. Well, she did not hear so very well, but she was not deaf either.

Q. Did Mrs. Winter ask you to answer the telephone for her? A. No, she did not.

Q. I mean, generally. A. No, she did not be- 40

*Joseph Pfeiffer—Direct.*

cause it was understood I always answered the telephone.

Q. Did you at the same time get a telephone conversation in the evening from a man about Miss Jasnig's coming to work?"

10 Mr. McEnroe: If it please the Court, that is objected to on the ground that it is immaterial and further upon the ground that it is hearsay and not binding upon the respondent.

The Court: Objection sustained.

Mr. Pascarella: I except to that on this ground, that at this time I have shown that it was generally the custom in the house of Mrs. Winter's for this witness to take the telephone calls and he has so stated. Furthermore, it says in the deposition here, "She did not because it was generally understood that I always answered the telephone."  
20 He was given that permission in that house and here he was one of the younger members of that house and Mrs. Winters was a very old lady and he went to the telephone and took messages and I think that that is proper evidence on that ground.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

30 "By Mr. Pascarella: Q. This was seven o'clock on the night previous to the accident? A. Yes, that is right.

Q. Did you get a telephone call from Miss Meyer the week before when Miss Jasnig first came to work, do you remember?"

Mr. McEnroe: That is objected to upon the same ground, that it is immaterial, purely dealing with hearsay testimony and not binding on the respondent.

The Court: Objection sustained.

40 Mr. Pascarella: I take an exception.

*Joseph Pfeiffer—Direct.*

“By Mr. Pascarella: Q. Well, did you get it, I asked you? A. No, I did not.

Q. This telephone was in the house of Mrs. Winter? A. Yes.

Q. And you live in the house? A. Yes.

Q. And you would answer the telephone whenever it rang? A. Yes, when I was home.

Q. When you were home, yes, and you would either call Mrs. Winter to the phone or you would deliver the message to Mrs. Winter, is that right? A. I would deliver the message. 10

Q. When you got this telephone call from Miss Meyer, you delivered the message to Mrs. Winter? A. I did.

Q. You don't remember getting a telephone call about eight or nine o'clock from a man— A. No, because I was not home at that time.

Q. Are you positive that this telephone call that you got from Miss Meyer was with relation to the day of the employment when Miss Jasnig was hurt and was not in relation to the previous week when she worked for two days? 20

Mr. McEnroe: If it pleases the Court, there is an objection to that upon the ground that it is based upon hearsay, not binding on the respondent and that it is immaterial and that it calls for a conclusion. 30

The Court: I sustain the objection.

Mr. Pascarella: I take an exception. I may say here that I have shown by this witness that he was in the habit of taking telephone calls for Mrs. Winter and that he delivered a message to Mrs. Winter. That means that he told her that this witness—this petitioner was to come to work and at what time she was coming to work.

Mr. McEnroe: If it please the Court, I ask that be stricken from the record. 40

*Joseph Pfeiffer—Direct.*

Mr. Pascarella: It is argument of counsel.

Mr. McEnroe: It is not argument; it is pure testimony. There is nothing in the record so far to indicate anything of the sort and I ask that it be stricken from the record, sir.

The Court: That is not in the record. It is argument.

10 Mr. McEnroe: Then it is my understanding that it was not made part of the record.

The Court: It is not binding.

Mr. Pascarella: Exception, please.

“By Mr. Pascarella: Q. Yes, but we considered the day she worked and the time she was hurt as one day? A. Yes.

Q. You got a telephone call at five o'clock that night? A. Yes.

20 Q. Was it for the— A. For the coming morning.

Q. For the coming morning when she was working and was hurt, or was it for the week previous to that? A. No, it was for the coming morning.

Q. It was for the coming morning when she was hurt? A. Yes.

Q. You don't remember having any telephone call from Miss Meyer for the previous week, do you?”

30 Mr. McEnroe: There is an objection to that, if it please the Court, upon the same ground that the rest of this telephone conversation is hearsay and not binding upon the respondent.

Mr. Pascarella: It is immaterial. He merely says he answered the question before.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

“By Mr. Pascarella: Q. What did you say? A. Because I might not have been home.”

40 Mr. McEnroe: If it please the Court, I object to

*Joseph Pfeiffer—Direct.*

that question and ask that my objection be noted as timely. I did not have a chance to object while the question was being read. That question hinges upon the previous one and I, therefore, think that it ought to be stricken out.

Mr. Pascarella: But it is in the record already.

Mr. McEnroe: I object to it, your Honor.

Mr. Pascarella: No objection was taken by Mr. Braun and I think that it is too late to take your objection. 10

The Court: The objection is too late now.

Mr. Pascarella: "By Mr. Pascarella: Q. You got a telephone call from Miss Meyer? A. Yes.

Q. Miss Meyer said to you that Miss Jasnig would be in the next morning? A. Yes."

Mr. McEnroe: I object to that upon the same grounds, purely hearsay.

The Court: Objection sustained. 20

Mr. Pascarella: I take an exception.

Mr. McEnroe: I would also like to have it noted in the record at this time that the objection is timely even though the answer here indicated that the answer was given before.

Mr. Pascarella: "By Mr. Pascarella: Q. Now, when did you get this telephone call, did you get that the day before Miss Jasnig was hurt or did you get it the previous week?" 30

Mr. McEnroe: That is objected to on the ground that the witness has already answered and on the ground that it is not material, on the ground that it is hearsay and on the further ground that it is not binding on the respondent.

The Court: Objection sustained.

Mr. Pascarella: Exception. I may say in connection with this testimony that this is not hearsay evidence. This is direct evidence of this particular witness. He did not hear it from anybody 40

*Joseph Pfeiffer—Direct.*

else. He said that he got a call from Miss Meyer and he told a certain fact—he was told a certain fact by Miss Meyer which he transmitted to Mrs. Winter. I can't see the connection of hearsay here at all. He is testifying to facts and not to something that somebody else may have told him.

The Court: Objection sustained.

10 Mr. Pascarella: Exception.

“By Mr. Pascarella: And it was not with relation to the employment the week before? A. No.”

Mr. McEnroe: That is objected to on the same grounds.

The Court: Objection sustained.

Mr. Pascarella: Exception.

“By Mr. Pascarella: Q. In this message that you got from Miss Meyer, what did Miss Meyer say to you?”

20 Mr. McEnroe: Now, of course, that is objected to upon the ground that it is pure hearsay and not binding upon the respondent.

The Court: Objection sustained.

30 Mr. Pascarella: I take an exception. I say in this connection, if the Court please, that I have shown here by this witness that he was in the house at the time, that he got a telephone call from a Miss Meyer, he knew her and he delivered the message to Mrs. Winter and I think that that is not hearsay testimony. He certainly can testify to that fact.

The Court: Objection sustained.

Mr. Pascarella: I take an exception. Will your Honor withhold the ruling on this until I get Miss Meyer to testify? She spoke to this young man and she is here to testify that she made this call at that time and delivered the message to Mrs. Winter.

40 Mr. McEnroe: If it please the Court, I don't

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see how that has anything to do with this deposition at all. In the first place, I think your Honor must rule upon these objections as we go along and not wait until such time as some witness gets on the stand and attempts to testify to the same thing.

Mr. Pascarella: I will withhold this testimony because of the fact that it is not connected up at this time and I will connect it later after Miss Meyer testifies and takes the stand as a witness. 10

Mr. McEnroe: In the ordinary course of events it is my understanding that when depositions are ordered by a Court and when these depositions are returned to the Court and the Court then orders that they be read into the record, they have to be read into the record in their entirety and they cannot be split up and put in at the convenience of counsel. In other words, the proceeding so far as depositions are concerned is entirely within your Honor's jurisdiction, both as to the method of their being taken in compliance with the Statute. But, as I have said before, your Honor controls the entire situation so far as depositions are concerned, but I believe your Honor is inclined to follow your own statement that they are to be read into the record in their entirety at this time. 20

Mr. Pascarella: I do not desire to keep any of this out. I expect to put the whole thing in, but at this time, in order that the record will not be confused, and in order that a proper foundation will have to be laid before I can go on further with these depositions I think that the proper thing to do would be to put Miss Meyer on the stand so that the testimony will be uniform insofar as the petitioner's case is concerned, and in view of the fact that this witness is here, I believe that I have a perfect right to put her on the 30 40

*Joseph Pfeiffer—Direct.*

stand at this time and then continue with the reading of these depositions later on. I can do with these depositions just what I would do with that witness were he here in person.

10 Mr. McEnroe: I made that offer at the time that these depositions were offered, to have them put in at their regular place and Mr. Pascarella said no, that he wanted them offered at that time.

20 Mr. Pascarella: The former part of these depositions came in at the beginning of the case, because they were the foundation of the case, that this petitioner was working in a house and this witness saw her working there and now the question of the engagement is a different thing entirely that can come up later and this witness has testified to the specific fact that he actually saw her working in this house on that particular day and now the other part of the testimony deals with the engagement which took place prior to the time that she came to work.

Mr. McEnroe: If it please the Court, I press my objection.

30 The Court: My ruling is this: that when you take depositions of a witness that deposition is the same as their testimony. Now, the attorney for the petitioner could elect to put a witness on the stand and bring out certain evidence and submit it to cross-examination or he could elect to put that same witness on the stand to present other evidence, so that being the case, it is my ruling that the attorney for the petitioner may at any time present such part of the evidence as he wishes in order to get his evidence in.

Mr. McEnroe: Exception, please.

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DORIS MAYR, called as a witness on behalf of the petitioner, being duly sworn, testified as follows:

The Court: Are you willing to consent to an amendment in this deposition? I see that this witness' name in the deposition is spelled Meyer.

Mr. McEnroe: Yes.

10

The Court: You are willing to consent to that change?

Mr. McEnroe: Yes.

*Direct-examination by Mr. Pascarella:*

Q. Where do you reside, Miss Mayr? A. Seven Freeman Avenue, West Orange, now.

Q. Did you know Mrs. Wolfgang Marie Winter during her lifetime? A. Oh, yes, I did.

20

Q. How many years did you know her? A. Quite a good many. We belonged to one church for years.

Q. And do you know Miss Mary Jasnig, the petitioner? A. Yes.

Q. How long have you known her? A. For years, too.

Q. What is her occupation? A. Very good.

Q. Her occupation? A. Occupation?

30

Q. Yes. A. Dressmaking.

Q. And do you know whether Miss Jasnig worked for Mrs. Winter as a dressmaker in the past? A. Yes.

Mr. McEnroe: Now, just a moment. I object, if it please the Court, unless this woman knows of her own knowledge.

Mr. Pascarella: Yes, of your own knowledge, do you know?

The Witness: Yes, I do.

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*Doris Mayr—Direct.*

*By Mr. Pascarella:*

Q. And for how many years had Miss Jasnig worked for Mrs. Winter? A. I don't remember.

Q. Well, approximately how many?

10 Mr. McEnroe: If it please the Court, I object unless the time is stated when she first started to work for her and how long.

*By Mr. Pascarella:*

Q. When did she first start to work for Mrs. Winter as a dressmaker? A. Two years ago, about, I don't remember.

Q. You don't remember? A. Oh, it is years ago.

Q. Was it five years or ten years? A. Oh, no, it is longer than that, I believe.

20 Q. And did she work for Mrs. Winter continuously over a period of years? A. No, I think there was an intermission.

The Court: A little bit louder.

Mr. Pascarella: She thinks there was an intermission, she said.

*By Mr. Pascarella:*

30 Q. When was the time of this intermission, do you know? A. I don't remember.

Q. About how many years ago? A. I don't really remember how many years it was.

Q. And do you remember the time she returned to work after this intermission? A. Yes, I don't know the exact time, the exact date.

Q. About how long ago? A. It was in the Spring, not long before the accident.

40 Q. How long before the accident, do you know? A. Well, about a few weeks, I mean, I really don't know.

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Q. Before Miss Jasnig returned to work for Mrs. Winter, just before the accident, did you have any conversation with Mrs. Winter about getting a dressmaker? A. Yes, yes.

Mr. McEnroe: Just a moment, if it please the Court, I object to any transaction had with the decedent, Mrs. Winter, first upon the ground that Section four of the Evidence Act prevents it by its terms and secondly because that has been interpreted so far as the Compensation Bureau is concerned in the case of Horn vs. Arnet. 10

Mr. Pascarella: This is not the petitioner. This is a third party that is not an interest in the matter. This is a party that has no interest in the matter.

Mr. McEnroe: It does not make any difference. 20

The Court: I understand it is stipulated that Mrs. Winter is deceased?

Mr. Pascarella: That is right.

Mr. McEnroe: I think there has been an order signed having the death stated on the record.

The Court: I don't know whether it was stated or not.

Mr. Pascarella: That is right. I have a copy of the order here. 30

The Court: Objection sustained.

Mr. Pascarella: I take an exception to this on this ground: Section four only applies to a party who has an interest in the transaction. This is an entirely disinterested witness who has no interest whatever in the matter, and that part of Section four which counsel is relying upon only applies 40

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10 to the petitioner if it applies at all in this Court, and it does not apply to a disinterested witness. Section four says only a party who has an interest in the matter and it certainly would not apply to this witness. This witness is merely a witness for the petitioner, and Section four does not apply in this case at all, and furthermore Section four does not apply to this case because this case that is stated by my opponent was decided before the 1918 amendment to the Workmen's Compensation Bureau Act, and if you will go back and get the date of this case, you will find that this case was decided in 1916 and the Act was amended, Section nine was passed in 1918 and I may say as far as Section 20 nine is concerned, that the Court of Errors and Appeals in the Uvaldi Asphalt Pavement Company case, 98 Law 696, says that the 1918 amendment of the Workmen's Compensation Law was tagged as unconstitutional because it changed the rules of evidence, and the Court held that it was not an amendment to the Evidence Act, but to simplify the procedure in Workmen's Compensation cases. Furthermore, the Knickerbocker Ice case, 218 New York, stated that the purpose of this amendment was to wipe out all the restrictions against any technicality in cases of this kind and it says that the evidence is admissible but the probative value of the evidence is a different question, and the Court goes on to say, 30 "But as to the probative force, an entirely different legal situation is presented." In other words, the evidence is admissible in 40

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this Court, but the weight that the evidence has to be given is a different matter. So in the Knickerbocker Ice case, there a man was injured and he went away from work and he complained to his wife and his doctor. He complained to his wife and his doctor that he had received an injury on the job and that was the only evidence presented in Court, and the same thing was held in a recent case—I think it is a case in which the Ford Motor Company was involved, in 166 or 167 Atlantic, where the same ruling applied, because the only evidence that was admitted in the case was the statements of the deceased and these were controverted by the statements of other employees that he was not hurt, but the Court said that ordinary hearsay evidence is admissible but you can't give it the full probative force if it is the only evidence that you have, but Section four—if you will look at section four you will find that that section does not apply to the testimony which I am now offering, that it only applied to the petitioner because he is a party to the action. I would ask your Honor to get Section Four and look at it before you pass on this.

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The Court: I have a copy of it here. I will sustain the objection under the Evidence Act.

Mr. Pascarella: I take an exception.

Mr. McEnroe: May it please the Court, I am objecting to this further, as a matter of protection more than anything else, and I would like also to have it noted on the record that my objection to this testimony

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is also upon the further ground that it is based upon evidence which is entirely hearsay. In other words, I want to protect that portion of the record and I would like to have your Honor rule on it to that extent also.

10 The Court: You may continue.

*By Mr. Pascarella:*

Q. You don't gain by the result of this case, do you? A. No, no.

Q. You are an acquaintance of Miss Jasnig's and of Mrs. Winter's? A. Yes.

Q. And then, two or three weeks before Miss Jasnig was injured you met Mrs. Winter, did you not? A. No, Mrs. Winter came into my store.

20 Q. And what did she say to you?

Mr. McEnroe: I object, if it please the Court, upon the same ground.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. As the result of the conversation you had with Mrs. Winter, did you have any conversation with Miss Jasnig? A. Not just then, afterwards.

30 Q. How long afterwards? A. I don't remember just when, but Miss Jasnig afterwards came into my store always.

Q. And what did you do after that? A. After that I asked Miss Jasnig—

40 Mr. McEnroe: Just a moment, if it please the Court. If it is a question of conversation I am going to object, upon the ground that it is an attempt to violate the provisions of Section four of the Evidence Act in

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this respect, that the Evidence Act provides that no testimony shall be offered respecting any transaction with or statement by any testator or intestate.

The Court: You can testify as to the time.

Mr. McEnroe: But the woman attempted to relate something of a conversation. 10

The Court: I will strike it out if it is not the proper question.

*By Mr. Pascarella:*

Q. After you spoke to Miss Jasnig, what did you do?

The Court: No conversation, just what you did.

The Witness: Well, I called up Mrs. Winter. 20

*By Mr. Pascarella:*

Q. You telephoned to the house? A. What is that?

Q. You telephoned to the house? A. Yes.

Q. Had you called up Mrs. Winter before on the telephone before this particular time? A. Many times but not concerning Miss Jasnig.

Q. Just to talk with Mrs. Winter? A. Yes. 30

Q. How often did you do that? A. I could not remember that time. Sometimes it may go for weeks.

Q. You knew the telephone number? A. Her telephone number?

Q. Yes. A. Oh, yes.

Q. And did you know her nephew or relative, Joseph Pfeiffer? A. Yes.

Q. And when you called up Mrs. Winter, who would answer the telephone? A. Sometimes Mrs. 40

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Winter and sometimes young Mr. Winter and sometimes this man, too, mostly this young boy when he was at home.

Q. And when you called up with reference to Miss Jasnig's engagement, who answered the telephone? A. This boy.

10 Q. And did you recognize the voice over the telephone? A. Yes.

Q. What did you say to him?

Mr. McEnroe: I object, if it please the Court, upon the ground that any conversation which this woman may have had with Mr. Pfeiffer is not binding upon this respondent.

20 Mr. Pascarella: I have connected it up, because the testimony now shows that this call was received by Mr. Pfeiffer and he transmitted it to Mrs. Winter.

Mr. McEnroe: It makes no difference.

Mr. Pascarella: I reserve the right to connect it up. Of course, if I don't connect it up, it can be stricken out.

30 Mr. McEnroe: I press my objection at this time, sir, anything which may have transpired between these two parties certainly can't be binding upon the respondent, regardless of what is connected up later on, it can't be binding on this respondent.

40 Mr. Pascarella: I may say in this connection, if the Court pleases, that this Court can receive all kinds of evidence as long as it is material to the issue. It can be hearsay evidence, it can violate section four, and it can violate every rule of evidence according to Section nine of the Act of 1918. The only question that is to be decided by

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your Honor when you make your decision, if there is not enough competent evidence introduced in the case to sustain your verdict in favor of the petitioner, then you would overrule it, but otherwise if you would decide on competent and incompetent evidence but there was enough competent evidence, your finding then would be correct. In other words, you receive all the evidence but you disregard in your determination that evidence which violates the rules of evidence. 10

The Court: Of course, this evidence is not binding on the respondent in this case. There can be no doubt about it.

Mr. Pascarella: If the Court please, if you will look at the petition in this case and the respondent's reply, you will find that they admit that this woman was employed and now they come into Court here and they try to get around it. However, the answer shows that there is an admission that she was employed. 20

The Court: Well, then, why are you attempting to prove it?

Mr. Pascarella: Well, I want to bring out other facts. The further objection here is that it is casual employment and I want to prove that it is not casual, that it continued in more than one instance and they don't deny that. 30

Mr. McEnroe: Yes, we do.

Mr. Pascarella: "Question fourteen. What was the petitioner's regular occupation, what kind of work was he doing at the time of the accident?" The answer is that 40

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the petitioner was doing some sewing work for the respondent for a day.

Mr. McEnroe: That is not an admission of employment under the terms of the Workmen's Compensation Act. As a matter of fact—

10 Mr. Pascarella: (Interrupting) The inference is that.

Mr. McEnroe: May I have that, please? As a matter of fact there is a definite paragraph set out here under question number thirty-nine which explains that very fully, in which the respondent denies that compensation is payable for the reason that the petitioner's employment was casual, that her injuries were not the result of an accident arising out of and in the course of her employment. Therefore, what may have gone on between other parties can't possibly be binding upon this respondent. In other words, John Smith and John Jones might stand on the street corner and talk to Miss Jasnig and one decide something and then the other call up Mrs. Winter and say, "Here Mrs. Winter, I thought this was thus and so, and so on. I want you to do this"—

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Mr. Pascarella: You are talking in circles now. This is evidence which shows a certain telephone call was made to the house of this respondent, and a man answers who is a member of the household and this member of the household then transmits that particular message and he testifies that the message that he got was delivered to the respondent and the decedent.

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Mr. McEnroe: Which means nothing.

Mr. Pascarella: Which means that there is a casual connection there. There is no question about that.

Mr. McEnroe: The mere fact that someone in the house of the respondent was called on the telephone and had a conversation with some other party can't possibly be binding upon the respondent. Why, anything might have been said over that phone. 10

Mr. Pascarella: We are not trying to prove anything. We are trying to prove that she was going to work there. That is all we are trying to prove. We are not talking about any occurrence in January. We are talking about an employment and that is what we are going to bring out in the testimony. We are not going to bring in anything else. 20

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. Did you see Mrs. Winter at any time after Miss Jasnig went to work there the first time?

A. No, after the accident, yes.

Q. When Mrs. Winter came into your store and spoke to you about engaging the dressmaker for her, what did she say to you? 30

Mr. McEnroe: I object, if it please the Court, upon the same grounds.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. Do you know the children of Mrs. Winter?

A. Yes, I do. 40

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Q. Her sons? A. Yes, I do.

Q. Do you know Charles A. Winter? A. Yes.

Q. Do you know what is the name of the other son? A. Harry.

Q. Harry? A. Yes.

Q. After Miss Jasnig was injured— A. Yes?

10 Q. Did Charles Winter come to see you? A. Yes.

Q. What did he say to you?

Mr. McEnroe: I object.

The Witness: He gave me—

Mr. McEnroe: Just a moment. If it please the Court, I object to it on the ground that it is immaterial what Charles said to her.

20 Mr. Pascarella: If your Honor please, he is a party to this action. He is the executor and is directly connected with the respondent in this action.

Mr. McEnroe: If it please the Court, that makes no difference. At the time the conversation was had there was no indication that he was the executor. It is purely hearsay.

30 The Court: Just a minute, it is purely hearsay. Furthermore, whether he was the executor or not makes no difference.

Mr. McEnroe: It is purely hearsay testimony and not binding upon the respondent.

The Court: It is agreed that this conversation was had before he was the executor?

Mr. Pascarella: Yes.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

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*By Mr. Pascarella:*

Q. When Mr. Charles Winter came to you and spoke to you after Miss Jasnig was hurt, did he tell you whether or not he was sent there by his mother?

Mr. McEnroe: I object, if it please the Court, on the ground that it is immaterial.

The Court: Objection sustained.

10

Mr. Pascarella: Exception. In view of your Honor's ruling that this witness can't testify to any transaction or any conversations she has had with the decedent—that is, with Mrs. Winter, because she is now deceased, I can't get the information or the evidence in connection with this employment. Of course, I object to your Honor's ruling and I will take an exception to your Honor's ruling, because it has been held that this witness, not being a party to the action, has no interest in the event and she can testify in full as to whatever conversation or the different acts which took place, but in view of your Honor's ruling I will have to withdraw this witness and continue with the next. Now, in connection with the rest of these depositions, if your Honor please—

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The Court: What page are you now reading from?

Mr. Pascarella: Page twelve.

The Court: I sustained the objection on the question at the top of page eleven.

Mr. Pascarella: And the next question is "Did she say in this conversation that Miss Jasnig shouldn't come tonight?"

Mr. McEnroe: I object to that on the

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ground that it is leading, and Mr. Pascarella agreed in the deposition that it was leading and he withdrew the question at any rate.

10 Mr. Pascarella: (Reading) "By Mr. Pascarella: Q. Did she say anything with respect to whether or not she could come that night?"

Mr. McEnroe: Now, I object to that on the same ground.

Mr. Pascarella: I may say in this connection—

Mr. McEnroe: Excuse me, on the ground that it is immaterial and not binding upon the respondent and upon the further ground that it is hearsay.

20 The Court: Objection sustained.

Mr. Pascarella: I take an exception.

"By Mr. Pascarella: Q. What else did Miss Mayr say to you in that conversation?"

Mr. McEnroe: I object to that on the ground that it is not material, not binding on the respondent and that it is hearsay.

Mr. Pascarella: Well, he does not know what he is going to say.

30 The Court: Objection sustained.

Mr. Pascarella: I take an exception.

"By Mr. Pascarella: Q. And you told Mrs. Winter that?" He says, "Yes, I did."

Mr. McEnroe: I ask that that be stricken out. Will you consent to that?

Mr. Pascarella: No, I won't consent to anything.

The Court: Whereabouts are you reading now?

40 Mr. McEnroe: It is on page 12, if it

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please the Court. You will find that the question is, "What else did Miss Mayr say to you in that conversation?" Mr. Braun objected and the witness then answered that question and Mr. Pascarella continued right on and said, "And you told Mrs. Winter that?"

The Court: I sustain the objection on that. 10

Mr. McEnroe: Yes, and I also think that the answer should be stricken from the record.

Mr. Pascarella: Well, it is in the record, Mr. Braun objects and moves to strike it out, and I think it is too late.

The Court: It is too late now.

Mr. Pascarella: You can read the cross-examination. 20

Mr. McEnroe: "By Mr. McEnroe: Q. Now, after Miss Jasnig had finished her work, the afternoon before the morning that she was hurt, and had stated that she wanted to get an early supper—she said she wanted to get an early supper, did she not?" That is objected to by Mr. Pascarella.

Mr. Pascarella: I will withdraw the objection. 30

Mr. McEnroe: The further question. "At the supper table you say she asked whether she could stay that night? A. Yes."

Mr. Pascarella: I object.

Mr. McEnroe: The same objection. I assume that is withdrawn?

Mr. Pascarella: That objection is not withdrawn. I object to it on the ground that it is not proper cross-examination. 40

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There is nothing in the testimony—in the direct testimony as to whether she had supper or anything in connection with supper.

The Court: I will sustain the objection.

Mr. McEnroe: Exception, please.

10 “By Mr. Braun: Q. Before she said that, was anything done by you in the way of arranging for her leaving early and going to New York? A. Yes.”

Mr. Pascarella: Same objection.

Mr. McEnroe: Well, now, that is proper cross-examination, because there is earlier testimony. On direct-examination there was some question about this woman's getting ready to leave or making an arrangement to either leave or stay, I forget which.

20 Mr. Pascarella: It is not in this testimony.

Mr. McEnroe: At any rate, that question was brought out.

Mr. Pascarella: Not in the direct testimony.

The Court: Page d, “were you present”--

Mr. Pascarella: That is the previous week. That is not in connection with the day that she was injured.

30 Mr. McEnroe: Miss Jasnig said, “I will be back next week.” He testified that Miss Jasnig had dinner there on that day and that she worked the whole day.

The Court: I sustain the objection.

Mr. McEnroe: Exception, please.

“By Mr. Braun: Q. What was done by you? A. I had to call up Harry Winter to bring her down to the tubes station.”

Mr. Pascarella: Same objection.

40 The Court: Objection sustained.

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Mr. McEnroe: Exception.

“By Mr. Braun: -Q. And that was done prior to her asking if she could stay all night, is that right?”

Mr. Pascarella: I object to that.

The Court: Objection sustained.

Mr. McEnroe: Exception.

“By Mr. Braun: Q. Did he come to take her to the Tube station? A. No, he did not. 10

Q. Why not?”

“Mr. Pascarella: I object to that.

A. Because I had to call him back, you know, I had to call him again and tell him not to come, that Miss Jasnig decided to stay.”

Mr. Pascarella: Same objection.

The Court: I sustain the objection.

Mr. McEnroe: Exception, please. 20

“By Mr. Braun: Q. Was that because of something Miss Jasnig told you, that you called him back? A. Well, it was not, but as long as Miss Jasnig said that she would not go home, he didn't have to come up and get her. Mr. Braun: That's all.”

Mr. Pascarella: That's all.

30

MARY JASNIG, the Petitioner, called as a witness on her own behalf, being duly sworn, testified as follows:

*Direct-examination by Mr. Pascarella:*

Q. Where do you live, Miss Jasnig? A. 2171 Third Avenue, New York City.

Q. What is your occupation? What do you do for a living? A. I was working in the accident as a dressmaker. 40

*Mary Jasnig—Direct.*

Q. Did you know in your lifetime, Mrs. Wolfgang Marie Winter? A. I know Mrs. Wolfgang Marie Winter—I work for her since 1911, for five or six years previously.

10 Mr. McEnroe: May it please the Court, I ask that the testimony as to working for Mrs. Winter be stricken out.

The Court: Strike it out. It is not responsive.

*By Mr. Pascarella:*

Q. Were you employed by her as a dressmaker on February 29, 1932?

20 Mr. McEnroe: Now, I object, if it please the Court, upon the ground that it calls for a conclusion of this witness, and secondly upon the ground that it is an attempt to bring out transactions with the deceased in contradiction to Section four of the Evidence Act.

Mr. Pascarella: In that connection I may say that there is an admission in the answer to question fourteen of the respondent's answer that she worked there that day.

30 The Court: It is a conclusion. I will sustain the objection.

Mr. Pascarella: I take an exception. My contention still is that the Evidence Act does not apply in a proceeding of this kind.

The Court: I mean, it is a conclusion.

Mr. Pascarella: As to what?

The Court: It is up to me to find out whether she was employed there or not. She can testify as to what she did.

40

*Mary Jasnig—Direct.**By Mr. Pascarella:*

Q. Where did Mrs. Winter live on February 29, 1932? A. I was working before and I continued—

Q. Where did she live on that day?

Mr. McEnroe: I ask that the answer be stricken out on the ground that it is not responsive.

10

The Court: Strike it out.

*By Mr. Pascarella:*

Q. Where did she live on that day? A. What day?

Q. On February 29, 1932. A. On February 29th I continued to work my way for Mrs. Winter—

Mr. Pascarella: Just a minute.

Mr. McEnroe: Will you consent that that be stricken out?

20

Mr. Pascarella: Yes.

The Court: Where did she live on February 29th?

The Witness: Me?

The Court: No, Mrs. Winter.

*By Mr. Pascarella:*

Q. Mrs. Winter, where did she live in East Orange? A. She lives in East Orange.

30

Q. What address? A. I come to work on Monday, just as I was working—

The Court: Just a minute.

Mr. McEnroe: Will you agree to have that stricken out?

Mr. Pascarella: Yes.

The Witness: I was working.

40

*Mary Jasnig—Direct.**By Mr. Pascarella:*

Q. Do you know on what street she was living on? A. Certainly.

Q. What is the name of the street? A. Let me see. It is square—what is the name now—I cannot remember the name. What is the name now?

10 Q. Did she live at 90 Kent Place, East Orange?  
A. Kent Place?

Mr. McEnroe: Kentwood.

The Witness: Yes, she has there a house.

*By Mr. Pascarella:*

Q. 90 Kentwood Place, East Orange? A. That is the right name, East Orange.

Q. On February 29, 1932, were you in that house? A. I was working. I was engaged to be  
20 in that house.

Mr. McEnroe: I ask that the answer be stricken out.

The Court: Strike it out.

*By Mr. Pascarella:*

Q. Were you in that house? Yes or no? A. Yes, your Honor.

Q. What time did you get to that house? A. At half-past eight.  
30

The Court: In the morning?

The Witness: Half-past eight in the morning, Judge.

*By Mr. Pascarella:*

Q. Now, previous to that time, when were you in that house? A. I was working on a Saturday—on Thursday, Friday and Saturday.

40 Mr. McEnroe: I object, if your Honor please, to this testimony.

*Mary Jasnig—Direct.*

The Witness: And you see when I was working—

The Court: Just a minute. Not what you were doing. Now, listen to the question and wait until your lawyer finishes his question. He simply wants to know when you were in that house before, is that right?

10

Mr. Pascarella: Yes, when were you in the house before that time.

The Court: Now, just answer that question.

The Witness: That was only on Thursday, Saturday, February 18th, wasn't that right?

Mr. Pascarella: All right.

The Witness: It seems to be at ten o'clock, and I leave after, after I have dinner.

20

The Court: Please. Strike all that out.

*By Mr. Pascarella:*

Q. You must answer the question literally. A. I know what happens to me.

Q. You were in the house on February 18, 1932? A. Yes.

Q. Were you in there any other day of the week? A. I sleep there all the time, and I was through with my work, I sleep there.

30

Q. Do not mention about your work. Just mention about being in the house. A. Yes, sir.

Q. You were in the house on the 18th? A. On the 18th, and the 19th.

Q. The 18th, the 19th and the 20th? A. And the 21st, too, in the morning, till half-past eight.

Q. And did you sleep in the house on the night of February 17th, 18th and 19th? A. Every night.

40

*Mary Jasnig—Direct.*

Mr. McEnroe: She didn't say that she was there.

The Witness: Always I was there.

Mr. Pascarella: I will correct that to read the 18th, 19th and 20th you slept there?

The Witness: Sure, that is all, I always sleep there.

10

*By Mr. Pascarella:*

Q. What work did you do in the house on the 18th of February?

Mr. McEnroe: Just a moment, if it please the Court, I object to that.

The Court: Ask her what she was doing.

Mr. Pascarella: I asked her what work she was doing and she said dressmaking.

20

Mr. McEnroe: I object to the use of the word "work". It is leading.

The Court: It is leading.

*By Mr. Pascarella:*

Q. What did you do on February 18th? A. I started to cut a dress, which I make, one dress and a half and I alter on the dress.

Q. You alter on what dress? A. One dress finish and one and a half started.

30

Q. Go ahead. On what day did you do that? A. One dress I was started on a Saturday, it is a colored dress, and I was working on it every day there, I was there every day, and I was eating there, too.

Q. Did you have your meals there? A. Breakfast, lunch and supper and sleep there.

Q. To whom did this dress belong or these dresses? A. Mrs. Marie Wolfgang Winter, herself personally.

40

*Mary Jasniq—Direct.*

Q. And how much money was she giving you this day for this work?

Mr. McEnroe: I object, on the ground that he is attempting to have the witness testify to transactions with the deceased, in contradiction of Section four of the Evidence Act.

10

The Court: Objection sustained.

Mr. Pascarella: I take an exception on the same grounds as urged previously.

*By Mr. Pascarella:*

Q. Did you receive any money for this dress-making work that you did on the 17th, 18th and 19th? A. Yes.

Mr. McEnroe: Objected to upon the ground that it is immaterial. What she may have received from any particular source is not binding upon the respondent.

20

Mr. Pascarella: In answer to question twenty-five it says that the wages were fixed by the hour, and the respondent in the answer said that the petitioner was employed at Four Dollars per day. It is an admission there that she was working.

The Witness: Reduced from Eight Dollars and Seven Dollars to Four Dollars.

30

Mr. Pascarella: Just a minute. It doesn't make any difference what you were getting before. There is an admission here.

The Court: I will allow the question.

Mr. McEnroe: Exception, please.

*By Mr. Pascarella:*

Q. How much were you getting a day? A. I was getting eight dollars a day.

40

*Mary Jasnig—Direct.*

Q. Not what you were getting, but this particular day that you were working. A. It was four dollars a day.

Q. Who gave you the four dollars? A. Mrs.—

10 Mr. McEnroe: I object to the question, upon the ground that it deals with transactions with the decedent, in contradiction to Section Four of the Evidence Act.

The Court: I will allow it, because it is admitted in the answer.

Mr. McEnroe: There is not an admission, because we have qualified it.

20 Mr. Pascarella: How can you qualify it if you paid her four dollars a day? It is absolutely clear in the answer to question number twenty-four that her wages were fixed, "state rate per hour, the petitioner was employed at Four Dollars a day; give number of hours in her working day, seven." There is an admission there that she was being paid.

Mr. McEnroe: With particular reference to question number thirty-nine, if it please the Court, with reference to casual employment.

30 Mr. Pascarella: That is for the Court to find out, whether it is casual or not.

Mr. McEnroe: All right.

Mr. Pascarella: You say it is casual but you say you paid her four dollars a day for the work she did.

The Court: I will allow it.

Mr. McEnroe: Exception, please.

The Court: The answer admitted employment.

40 Mr. McEnroe: I have a further objection, your Honor.

*Mary Jasnig—Direct.*

Mr. Pascarella: It is for the Court to decide whether it was casual or not.

Mr. McEnroe: (Continuing) With particular reference to Section four, even though that is admitted in the answer, you can't testify to transactions with the deceased.

The Court: I will sustain the objection on that. 10

Mr. Pascarella: Exception, please.

*By Mr. Pascarella:*

Q. Who gave you the Four Dollars? A. The person, she always gives me the money.

Q. Who is the person who always gives you the money? Who is the person who always gave you the money, mention the name of the person? A. Mrs. Winter. 20

Q. All right. Mention Mrs. Winter. Now, on the 29th of February, 1932, what did you do in Mrs. Winter's house—I will withdraw that—on February 29, 1932, what time did you go to Mrs. Winter's house? A. Half-past eight in the morning I was supposed to be in the evening already.

Q. Wait a minute.

The Court: Just answer the question.

Mr. Pascarella: Just say half-past eight in the morning. 30

The Witness: Yes.

*By Mr. Pascarella:*

Q. And when you got there at half-past eight in the morning, had you come by any previous arrangement with Mrs. Winter?

Mr. McEnroe: Objected to.

The Court: Objection sustained.

Mr. Pascarella: I take an exception. 40

*Mary Jasnig—Direct.*

*By Mr. Pascarella:*

Q. When you left on the morning of February 21, 1932, did you have any conversation with Mrs. Winter about returning to work?

Mr. McEnroe: Objected to on the same grounds.

10

The Witness: She asked me to stay.

The Court: Don't answer the question. Objection sustained, strike it out.

*By Mr. Pascarella:*

Q. When you got there at half-past eight on February 29, 1932, what did you do? A. First I had breakfast.

The Court: Speak up so I can hear you.

20

The Witness: I took—we take the breakfast, first breakfast, then we went up to the sewing room to continue the dress I started on Saturday, two weeks before.

Mr. Pascarella: Who is we?

The Witness: Mrs. Winter, always Mrs. Winter, not for the daughter, only for Mrs. Winter.

*By Mr. Pascarella:*

30 Q. What did you do that day? A. I was working about half-past nine. Mr. Harry come to supper and he said Mother would like—

Mr. McEnroe: I object to any testimony relating to Mr. Harry.

The Court: You worked until about nine-thirty, is that right?

The Witness: Eight-thirty.

*By Mr. Pascarella:*

40 Q. When did you start work that day? A. Al-

*Mary Jasnig—Direct.*

ways start at nine o'clock, but always have to leave earlier other days.

Q. Just tell us when you started and what you did? Did you start working? A. The day I started working about a quarter to nine.

Q. And when did you stop working? A. I stop working at five o'clock.

Q. Did you stop for lunch? A. Lunch, we stopped certainly for lunch. 10

Q. After you stopped at five o'clock what did you do after that? A. After that, when I was finished, and put together all my sewing things, why I go down for supper.

Q. And you had supper? A. I had supper.

Q. And after that what did you do? A. After when she was through, we went in the bedroom, in the parlor, and she read the paper, so she handed me the other paper to read until it was about nine o'clock or about that hour, and then we went to bed. 20

Q. And then you went to bed? A. One room I went in.

Q. What were you going to do the next day? A. The next day I was to finish the dress and there was another dress that she showed me that she was getting ready, and I was going to start that. She showed me other work, a lace dress— 30

Mr. McEnroe: I object to all this conversation, if it please the Court.

Mr. Pascarella: She said Mrs. Winter showed her a dress.

The Witness: That is true.

Mr. McEnroe: What Mrs. Winter said I ask that it be stricken out.

*Mary Jasnig—Direct.**By Mr. Pascarella:*

Q. Then you went to bed that night? A. Sure, I always get to bed.

The Court: Just that day.

*By Mr. Pascarella:*

10 Q. What happened during the night? A. During the night?

Q. Yes. A. I had to go out in the morning about around three o'clock, or half-past three.

The Court: Let me get this.

*By Mr. Pascarella:*

Q. You mean you had to get out of bed? A. I had to get out because I had to get out to the bathroom, that is what I had to go.

20

The Court: About three o'clock in the morning?

The Witness: About three or half-past three, I cannot say exactly, your Honor, because it is so dark. She did not allow me to have the lights on.

The Court: All right. Wait a minute.

Mr. Pascarella: Don't talk that way. Just answer the question.

30 *By Mr. Pascarella:*

Q. Were there any lights in the hall? A. No light, she forbid me to have the light, to use it.

Mr. McEnroe: I move to strike it out.

The Court: Strike it out, the last part; ask her what happened to her.

*By Mr. Pascarella:*

40 Q. On your way to the bathroom—

*Mary Jaswig—Direct.*

The Court: Are you willing to admit what happened?

Mr. McEnroe: I don't know what happened.

The Witness: I know it.

*By Mr. Pascarella:*

Q. On your way to the bathroom what happened? A. I went out of the bed, got over toward the door and got in the hall, and it was pitch dark and she never had any lights— 10

Mr. McEnroe: Just a minute, I object to that.

The Witness: Don't say that, because this is true, they have no light and I had the accident, that is what it is.

Mr. McEnroe: If your Honor please, I move that all that testimony be stricken out. 20

The Court: All right. You went out, now tell us what happened.

The Witness: I got started—I walked out all right, out by the door near the bathroom, and I go near the stairs and then it is the bathroom, but it was so dark—

The Court: Well, did you fall down?

The Witness: I make the first step to enter the bathroom, and then I give a terrific scream, because I don't feel it, and I go down and when the boy comes to me he raised me up, and I was—what do you call it, the whole steps I went down. 30

The Court: You fell down the stairs?

The Witness: Yes.

*By Mr. Pascarella:*

Q. What injuries did you receive? Where were 40

*Mary Jasnig—Direct.*

you hurt? A. I don't know what happened, I thought it was only a terrific crash, but I don't know what was happening. I was all confused, I was bleeding.

Q. You went to the hospital? A. Didn't you want to hear the whole story when he come—

10 Mr. McEnroe: Just a moment, I object to that.

The Court: You admit she had an accident?

Mr. McEnroe: I admit she fell down the stairs but all this other talk that has been going on I object to.

Mr. Pascarella: If you can stem the tide, you are a better man than I am.

20 The Court: It is admitted that she fell down the stairs and was taken to the hospital.

Mr. McEnroe: All right.

*By Mr. Pascarella:*

Q. When you got to the hospital where were you injured? A. I was in the hospital.

The Court: Why don't you bring that out later?

30 Mr. Pascarella: I think we should go into the question of the injuries that she sustained.

Mr. McEnroe: Why don't you bring that out with your medical testimony.

Mr. Pascarella: Just to have her give the nature of the injury.

The Witness: I can explain the whole thing if you want it.

40

*Mary Jasnig—Direct.**By Mr. Pascarella:*

Q. What were the injuries? A. Mrs. Winter didn't call for me no doctor—

Mr. McEnroe: Now, I object, if it please the Court.

The Witness: It is true. I can show it. I can show that she don't want no doctor for me. 10

The Court: Strike all this out.

Mr. Pascarella: Miss Jasnig, please, just answer the question. You were injured on your wrist?

The Court: I think you better not bring that out at this time.

Mr. McEnroe: You can bring it out, if necessary, by your doctors.

Mr. Pascarella: I want to bring out the fact that you had a fractured vertebrae, Miss Jasnig. 20

The Witness: I had a fracture. I am a cripple for life, now.

Mr. McEnroe: I object to that, on the ground that it is a conclusion.

The Court: Objection sustained.

Mr. Pascarella: That is no conclusion. There is a fractured vertebrae. 30

The Witness: I had a wound on the head.

*By Mr. Pascarella:*

Q. Your wrist was broken? A. Another bone in the wrist, not only in the wrist, but another bone. And after this I stay all the time in the hospital.

Q. That day, February 29, 1932, you were to receive Four Dollars for that day? A. Four Dollars. 40

*Mary Jasnig—Direct.*

Mr. McEnroe: I object to this testimony relating to transactions with the deceased.

Mr. Pascarella: It is admitted.

Mr. McEnroe: That answer does not admit payment of wages. It only admits that sometime or other Four Dollars was paid.

10

The Witness: It was Five Dollars, too, and Charley bring that.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. When Mrs. Winter engaged you as a dress-maker, did you make any arrangement or have any conversation with her with respect to board and lodging? A. Always.

20

Mr. McEnroe: I object on two grounds, first upon the ground that the question presupposes something which is not in the testimony and secondly upon the ground that it calls upon the witness to testify to some transaction with the decedent, contrary to the terms of Section Four of the Evidence Act.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

30

*By Mr. Pascarella:*

Q. At the time that you were there on the 18th, 19th, and 20th, you slept at Mrs. Winter's house? A. Why, certainly.

Q. And you ate your dinner there, ate your meals there? You had your meals there? A. Always, always.

Q. And she paid you Four Dollars a day? A. Yes.

40

*Mary Jasnig—Direct.*

Q. For that work? A. Yes.

Mr. McEnroe: I object to that, if it please the Court.

Mr. Pascarella: The question has already been answered.

Mr. McEnroe: The question is not answered.

10

Mr. Pascarella: It certainly is answered.

The Court: I will allow it. It is admitted in the answer.

Mr. McEnroe: Exception.

*By Mr. Pascarella:*

Q. Was there any deduction made from the Four Dollars by Mrs. Winter— A. Eight Dollars was always my wages.

The Court: Strike that out. Finish your question.

20

*By Mr. Pascarella:*

Q. Did Mrs. Winter deduct anything from the Four Dollars a day she gave you for board or lodging? A. No, that is always Four Dollars, wages Four Dollars.

Mr. McEnroe: I object to that.

The Court: Objection sustained.

30

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. On February 21, 1932, after you were working for three days, how much money did Mrs. Winter give you?

Mr. McEnroe: I object, if it please the Court, on the ground that it calls upon the witness to testify to transactions with the

40

*Mary Jasnig—Direct.*

decident, contrary to terms of Section four of the Evidence Act.

10 Mr. Pascarella: She has already testified, if your Honor please. There is an admission made that she received Four Dollars a day. I just want to bring out this further testimony at this time. It is already admitted.

Mr. McEnroe: Isn't it repetition then?

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. Did you receive any money for the day that you were injured? A. You see, the day that I was hurt—

20 Mr. McEnroe: I object, if it please the Court.

Mr. Pascarella: Wait a minute—

Mr. McEnroe: On the same grounds.

The Court: From whom? Fix the person.

*By Mr. Pascarella:*

Q. Did you receive any money from Mrs. Winter for work for the day that you were injured?

30 A. The day I was sick?

Mr. McEnroe: I object to the question on the ground that it is an attempt, as I said before, to describe transactions with the deceased.

The Court: Objection sustained.

Mr. Pascarella: If your Honor please, there is an admission here that she was employed at Four Dollars a day.

40 Mr. McEnroe: Then, it is repetition.

*Mary Jasnig—Direct.*

The Witness: Five Dollars, too.

Mr. Pascarella: I would like to repeat it in the testimony. It is just one repetition, and I think that I am entitled to repeat at least one.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

10

*By Mr. Pascarella:*

Q. Did Mrs. Winter give you any money, any payment for the work that you did on February 29, 1932?

Mr. McEnroe: I object to that, if it please the Court, on the ground that this witness is attempting to testify to transactions with the decedent.

The Witness: He won't let me talk.

20

The Court: Objection sustained.

Mr. Pascarella: I take an exception.  
Cross-examine.

*Cross-examination by Mr. McEnroe:*

Q. How long have you been a dressmaker? A. I have been in this country since 1909 and since then I am working yet as a dressmaker. My profession is a dressmaker.

30

Q. Since you have been in this country? A. My profession is a dressmaker.

Q. Since 1909? A. Yes.

Q. When did you first— A. (Interrupting) Work for Mrs. Winter?

Q. Work for Mrs. Winter. A. In 1911.

Q. And for how long a period of time did you work for her? A. For her surely five or six years continually.

40

*Mary Jasnig—Cross.*

Q. Five or six years continuously? A. Yes.

Q. And then you stopped working for her? A. For her son and for the daughter-in-law many times.

Mr. McEnroe: I ask that that be stricken out as not responsive.

The Witness: I will tell you.

10

The Court: Strike it out.

*By Mr. McEnroe:*

Q. Now, as I understand it the first day on which you came to Mrs. Winter's house— A. Yes?

Q. (Continuing) Was on February 18th? A. For this time, after I discontinued work, you mean?

20 Q. I mean, talking about the day of the accident, the day that the accident is alleged to have happened. A. Yes.

Q. And when you got there you made a dress, did you not? A. Not right away, make three dresses and part of four dresses.

Q. You made three dresses, correct? A. Yes, and four dresses were to be made but I didn't finish them, because the accident break it up.

30 Q. Yes, I realize that. Now, at that time you were living in New York, were you not? A. No, I was—my residence is always in New York City.

Q. And when you didn't have anything to do in New Jersey you lived in New York? A. No, I live in New York, and I only come out here for work.

Q. You live in New York and you only come out here for work? A. For work, until the work is finished, and I sleep and get my meals.

40 Q. Now, these four dresses which you were supposed to have made— A. I can't hear you.

*Mary Jasnig—Cross.*

Q. These four dresses which you were supposed to have made— A. Three new dresses.

Q. Three new dresses? A. Yes.

Q. Were made in Mrs. Winter's home, correct? A. Always in her home, first floor; in the bedroom, next to her bedroom.

Q. Now, you worked there all day the day of the 18th, correct? A. What? 10

Q. I say you worked there all day the day of the 18th? A. Regular working day.

Q. Now, where were you working on the 17th, the day before you went to Mrs. Winter's home? A. That was in New York City. If there is anything to do with the work I do outside—

Mr. McEnroe: I ask that it be stricken out as not responsive.

The Court: Strike it out. 20

Mr. Pascarella: It is responsive.

The Witness: In New York City I never had an accident.

The Court: He wants to know what you were doing on the 17th.

The Witness: I was working in New York City.

The Court: Working in New York City?

The Witness: Yes.

*By Mr. McEnroe:* 30

Q. How long had you been working in New York City? A. In New York City I was working—sometimes I work two days in the family, and sometimes four days, three days, and sometimes only all day. I have a lot of customers, not only one, twenty-three years I am a dressmaker.

Q. You have a lot of customers? A. Yes, a lot of customers, now I don't have them because I am already a cripple and I lost them. 40

*Mary Jasnig—Cross.*

Q. Now, by the time you got through working on the dresses on February 18th, what time of the day was it? A. When I was through working I think 19th or 20th, it was Saturday, after dinner, I wanted to go home and Mrs. Winter stopped me and she said, "Are you going home?" "Yes,"  
 10 I said, "because you know next week I cannot continue your work. I have to go to Orange, back to work a whole week for Mrs. Brentano. Therefore, I say, I go home, I cannot stay here." And then she said to me, "Why don't you wait until he comes home? He comes home late," she says. And I says, "What do you want me to do?" She asked me to stay, and I said, "Well, I will promise you to stay a little while but I am not going to stay longer," and that is the way it happened.

20 The Court: What date is this?  
 Mr. Pascarella: That is the 18th.

*By Mr. McEnroe:*

Q. So you stayed that night? A. I stayed that night, but it was on the 21st.

Q. This was on the 21st that you are talking about? A. That I am talking about. You asked me what I was doing after my day's work was done.

30 Q. Which day did you finish, the 18th or 19th?  
 A. I was going to continue working and work three more days.

Q. Yes, and you stated that you stayed there because it was too late to go back to New York, isn't that so? A. It was not too late for me, because my time was to stay there in the night, every night I was working, when I was through it was my time to go to New York because I got a home. I don't have to go back. I live off nobody.  
 40

*Mary Jasnig—Cross.*

The Court: That is all.

*By Mr. McEnroe:*

Q. Where is Brentano's? A. If I need to go any place I don't have to beg.

Q. Wait a minute. Where is Brentano's? A. He lives at 282 Leonard Avenue, Orange, New Jersey. 10

Q. Did you ever work for him? A. Yes, I work for her twenty-three years, and I work for Mrs. Winter a long time, too, but I work for Mrs. Brentano first, thirty-three years, because you see that is a long time I am working.

Q. Now, you worked for Brentano just before you went to work for Mrs. Winter? A. Before her?

Q. I will withdraw the question. Before you went to Mrs. Winter? A. What? 20

Q. Before you went to Mrs. Winter you were working for Brentano's? A. Yes.

Q. Just before going to Mrs. Winter's home on February 18th? A. No, I was going to work. I was discontinuing, three days, 18th, 19th and 20th I work for Mrs. Winter and then I had to discontinue to go and work a half week for Mrs. Brentano.

Q. Why? A. Because that was the arrangement with Mrs. Winter. She asked me how many days I can go for her and I tell her that I can work for her three days, and I tell her the next week I have to go to Mrs. Brentano for a half a week. In fact, it was to finish the work and it was Washington's Birthday and Mrs. Winter wanted me to come there, she wanted me to get through with the work and then when I am going to finish the work I asked Mrs. Brentano, I said, "Please, 30  
40

*Mary Jasnig—Cross.*

I have to finish up at Mrs. Winter's," and I asked her to call up Mrs. Winter before she went to bed and then to tell her that I am not able for a few days to come to her anymore, that I come back to work for her later.

Q. Isn't it a fact that Mrs. Brentano was sick?

A. Mrs. Brentano was sick but I was working for Mrs. Brentano. I was working for Miss Brentano, Miss Ada Brentano, and they know all this.

Q. Now, isn't it a fact that you were working for Mrs. Brentano? A. Yes.

Q. And Mrs. Brentano got sick and you picked up three days work at Mrs. Winter's? A. No, sir.

Q. And that you then returned to Mrs. Brentano and had Mrs. Brentano call up Mrs. Winter and say please excuse Miss Jasnig? A. My goodness sakes alive, such lies, Heavens, how people can put them together, such lies. Can't you do better work than that? That, that is awful, carpenters think better.

Q. When you left Mrs. Winter on February 21st, didn't you go back to Mrs. Brentano? A. No, because it was to be Washington's Birthday, and I didn't start work.

Q. I mean the day after. A. On Tuesday I was going to work, but I come on Washington's Birthday at nine o'clock. I always prefer to come in the evening and to be ready for the next day, because it is arranged that way prior to the day—the day before we look after everything.

Q. So you went to Mrs. Brentano on the evening of Washington's Birthday? A. Washington's Birthday and Mrs. Winter knew that.

Q. And you worked for Mrs. Brentano from then until some weeks later? A. The day it was February 28th.

*Mary Jasnig—Cross.*

Q. Until you went back to Mrs. Winter? A. I was supposed to be, after the work of Mrs. Brentano, there was a Sunday, I stopped finishing the work at five o'clock, but it happened I could not finish, and this was I asked—I asked Mrs. Brentano after if I could not come back to her again, and I am going to finish it up in an evening or two, and I told her I will not be able to come back on account of being busy for tomorrow morning, and that is the truth, only the truth, and I don't know, and I never say anything else, and I would rather go under the ground than say lies. 10

Q. Now, when you went back to Mrs. Brentano on Washington's Birthday, you went back to finish up some work that you had? A. Never. I work through the whole week at Mrs. Brentano's, never touch nothing, but work for Mrs. Winter. I am only engaged by her, to come back the Sunday evening, that is all. I never work for Mrs. Brentano. For Mrs. Winter I used to work straight a whole week, and for Mrs. Brentano from Tuesday morning until twelve o'clock, to tell the truth. 20

Q. Wait a minute. You worked for Mrs. Brentano before that week, hadn't you? A. What?

Q. You had worked before that week for Mrs. Brentano? A. No, when I come from Europe, they make this engagement, and I work for Mrs. Brentano and Mrs. Winter. I come to see Mrs. Jurgesen, I come one day, I come to see her, because there are lots of times I come out in the afternoon to see her, and then she asked me, "Are you working?" I said, "Not today. I am here. You see I am here," because I make three dresses for Mrs. Winter, and no matter if Mrs. Jurgesen don't remember but I do remember, for I have a good memory. 30 40

*Mary Jasnig—Cross.*

The Court: Wait a minute. You have already answered the question. That is immaterial.

The Witness: I am a cripple now, he knows it, and with all the money they have they cannot enjoy it. They bring me pains and make me a cripple for life.

10 *By Mr. McEnroe:*

Q. Let me ask you what time of the day did this accident happen—what time of the night? A. In the morning, about three, about three o'clock. I can't tell you exactly. I didn't have no light to see. About half-past three.

Q. About 3:30 A. M.? A. About 3:30 A. M. or four o'clock.

20 Q. When you got up out of bed? A. Sure, when I got up out of bed.

Q. When you got up out of bed? A. Yes.

Q. Where were you going? A. I went out and I put myself near the door, to hold on near the door and to go to the bathroom.

Q. You were on your way to the bathroom? A. Yes, and I was testing with my hand where I was going.

30 Q. You were feeling your way along? A. I was feeling my way along, and I see a little bit because it is opened—what do you call it, the window, and it set in the bathroom, and I was feeling my way along, and I was testing—testing all the way, to feel the door but it was not the door and I go down.

Q. Listen, Miss Jasnig, were you going to the toilet in the bathroom? A. Yes, better women than I might have to go.

40 Q. How far along the hall did you get? A. It would be the length of the room.

*Mary Jasnig—Cross.*

Q. Was it at the end of your room? A. The bedroom in which I sleep.

Q. The bedroom in which you slept? A. Yes, and then it is a hall there.

Q. Yes? A. And there further it is the door that closes. And then it goes all the way up to the top floor, and this door, it is closed, and I was passing and I reached to the door. 10

Q. Until you reached where? A. To the door of the bathroom.

Q. The bathroom door? A. Yes, and I was—and I go to it and then I find that little bit of light and I reach where I think the door of the bathroom is and then I am sure of it, but I find I make a mistake and I tumble down all the steps and I get a terrific pain, and make a terrific scream and then the boy came out of the bedroom, because it is not far away, and he pick me up and he ask me, “Can’t you get up?” He asked me if I was hurt and if I could get up, and I told him, “No, I cannot get up any more.” And then he dragged me up to the bedroom—I have not anything to hide. 20

Mr. McEnroe: That is all.

*Redirect-examination by Mr. Pascarella:* 30

Q. Now, Mrs. Winter, just answer the question very shortly, and take your time. The other attorney stated that you had to stop work at Mrs. Winter’s on February 21st, because you had to go back to work for Mrs. Brentano. Now, what was the arrangement that you had made with Mrs. Brentano to go back to work for her? A. To Mrs. Brentano, that was made the arrangement already before I went to Mrs. Brentano. 40

*Mary Jasnig—Redirect.*

Q. Wait a minute. What day? A. I don't remember any more what day it was then.

Q. What day did you go back to work? A. To Mrs. Brentano?

10 Q. Yes. A. I started to work and I did not continue on with her work, but with Mrs. Winter I continued to work, but Mrs. Brentano was the first day going to start to work.

Q. And what day was that? A. That was, as I said, Washington's Birthday, the night before I came there and I worked through until Sunday, and even asked Mrs. Brentano, she will tell you.

Q. Now, when you stopped working at Mrs. Brentano's on Sunday evening, did you stop because Mrs. Brentano was sick and you could not go on with your work? A. Nothing doing.

20 Q. Or did you stop because you had made an appointment with Mrs. Winter to go back to work for her? A. Well, you see—

Mr. McEnroe: I object to that.

Mr. Pascarella: Don't answer the question unless you know what you are saying.

Mr. McEnroe: She has already answered the question.

Mr. Pascarella: No, she has not.

30 Mr. McEnroe: I object on the ground that he is attempting to have the witness testify to a transaction with the decedent.

The Court: I will allow it.

The Witness: No.

Mr. McEnroe: Exception.

Mr. Pascarella: Answer the question.

Mr. McEnroe: The witness answered the question.

Mr. Pascarella: I didn't hear the answer.

40

*Mary Jasnig—Redirect.*

Mr. McEnroe: The answer is "no" and the stenographer can read it.

Mr. Pascarella: I would like to have the question answered. I will ask it again. Just a minute, now, Miss Jasnig. Just keep quiet a minute.

The Witness: Yes.

10

*By Mr. Pascarella:*

Q. Just listen to what I ask you and then answer the question. Did you stop work on Sunday evening at Mrs. Brentano's house because she was sick? A. No.

Mr. McEnroe: I object, if it please the Court, on the ground that it is repetition.

The Witness: No.

The Court: I will allow it.

20

The Witness: Not anything.

Mr. Pascarella: Wait a minute, be quiet and just listen. Did you stop work at Mrs. Brentano's house on this Sunday evening because you had made an appointment with Mrs. Winters to start on Monday morning?

The Witness: No, because there was a separate engagement.

Mr. McEnroe: I object.

30

The Witness: She has always had her days taken previous. She was always there.

Mr. Pascarella: Wait a minute, Miss Jasnig, if you will only listen to my question.

The Witness: I answered your question.

Mr. Pascarella: You answered that wrong.

The Court: She has already answered it.

40

*Mary Jasnig—Redirect.*

*By Mr. Pascarella:*

Q. Now, when you went back to work with Mrs. Winted on February 29th, had you a previous engagement with her for that work? A. Why, certainly.

Mr. McEnroe: I object, if it please the Court.

10

The Witness: I certainly did.

20

Mr. Pascarella: If your Honor please, this question is proper because there was an attempt made on cross-examination to show that the reason she went back to work for Mrs. Winter on February 29th is because she had to stop her work with Mrs. Brentano on account of sickness with Mrs. Brentano. That is the question that the respondent's counsel asked and I am trying to show on the same point that the reason was that there has been a previous engagement and it was not the sickness of Mrs. Brentano, and I think at this time that the question is proper. They have opened the door themselves. If there is any violation of Section Four, they opened the door on their cross-examination.

30

The Witness: No sickness.

The Court: She has already answered. She testified that she did not stop work at Brentano's on account of sickness.

Mr. Pascarella: Now I am asking her why did she go back to Mrs. Winter.

The Witness: Because she engaged me.

Mr. McEnroe: Just a moment, I object to it.

The Court: I will allow it.

40

Mr. McEnroe: Exception, please.

*Mary Jasnig—Redirect.*

Mr. Pascarella: Answer the question. You are only getting this mixed up yourself, and this is your case and that's not my case. If you listen to me carefully you will answer the questions properly. When did she engage you?

Mr. McEnroe: I object to the form of the question, if it please the Court. I object on the further ground that it is an endeavor to have the witness testify as to transactions with the decedent, contrary to the terms of Section Four. 10

The Court: Objection sustained.

Mr. Pascarella: I take an exception.  
(Witness excused.)

20

AUGUST BRENTANO, called as a witness on behalf of the Petitioner, being duly sworn, testified as follows:

*Direct-examination by Mr. Pascarella:*

Q. Do you know Miss Jasnig, the petitioner?

A. Yes, I do.

Q. Did Miss Jasnig work for your— A. Mother. 30

Q. For your mother? A. For my mother for the past twenty years.

Q. And the day previous to the day she was injured, had she been working for your mother?

A. Yes, she had.

Q. Until what time did she work for your mother? A. She worked for my mother—she had supper at our house that night, the night of the injury, that is the 28th of February and she asked me to telephone. 40

*August Brentano—Direct.*

Q. And where did she ask you to telephone to?

A. At suppertime she said, "Will you please telephone to Mrs. Winter that I will not be able to come over to sleep in the night but that I will be over in the morning."

10 Q. And had she given you the address of Mrs. Winter? You did not know Mrs. Winter, did you? A. I knew of her and I met her on one or two occasions.

Q. And you telephoned her home? A. I telephoned her home.

Q. And did anyone answer the telephone? A. Yes, a young man.

Q. And you delivered this message to the young man? A. Yes.

Mr. McEnroe: I object, if it please the Court.

20 The Court: Objection sustained.

Mr. Pascarella: I take an exception. That is the petitioner's case.

30 Mr. McEnroe: Now, if it please the Court, I respectfully move for a dismissal of the petition filed in this case on the ground that it is clearly indicated by the petitioner's own testimony either one of two things—first, that there was no employment and secondly, that if there was any employment the employment was of a casual nature, and not covered by the terms of the Workmen's Compensation Act, and, as a matter of fact, excluded therefrom by a specific provision in the Statute.

40 I would like to point out first that Miss Jasnig herself testified that she was a dressmaker, and I think the Court can almost take judicial notice of what dressmakers are—that is, what their usual occupation is and how they follow it. Now, there

*Motion to Dismiss Petition.*

was no testimony on the part of anyone who was competent to testify as to an actual hiring in this case. There is no testimony on that score—that is, that there was any actual hiring. However, if we even go one step further and attempt to show that there was a hiring we get back to the testimony from which we tried to determine of what nature that contract, if any, was, and we find that if anything, that it was a contract of a woman in a private home calling upon someone to come in there and make for her a few dresses. 10

Now, if it please the Court, my understanding of casual employment is this, and I believe the upper courts have sustained the contention, that casual employment is not an employment which arises by chance, but is an employment the occasion for which arises by chance. Now, in this particular case Mrs. Winter was not engaged in the dressmaking business. There is no testimony to that effect. She was a private individual who wished at certain times by chance to have some dresses made. In other words, it was not in the ordinary course of her business to have dresses made, either for wholesale or retail purposes or even for the purpose of having them made for people, but it was for her own personal use, and occasionally and by chance the desire arose for a few dresses to be made. On those occasions she would call in a dressmaker. 20 30

Now, as evidence of the fact that this woman was not regularly employed, we find through the somewhat garbled testimony that she went to work for Mrs. Winter on February 19th—that is, that she went to her home at that time and that she stayed there working until the morning of February 21st when she left. Now, we know that she was working for Mrs. Brentano before that time 40

*Motion to Dismiss Petition.*

and we know that she went back to Mrs. Brentano on February 21st or the next day, I forget which, but at any rate she left Mrs. Winters on February 21st. From the testimony it appears that she then returned to Mrs. Winters on February 29th for the purpose of finishing up whatever work she had already started and that night or the next

10 night she said that she was getting ready to leave or was going to leave and she was told that she could stay, that she had the use of the bedroom—

Mr. Pascarella: There is no evidence to that effect.

Mr. McEnroe: Well, I gathered it from your petitioner's testimony.

Mr. Pascarella: There is no evidence to that effect at all.

20 Mr. McEnroe: You may have misunderstood it; whether or not I did, I don't know. At any rate, she was preparing to leave after that period expired. She was either asked, told, or invited or by some means she remained in that house the night she was injured and she got up during the night for the purpose of going to the bathroom, and while on the way to the bathroom she was injured. Now, we get to the second point, did the injury arise out of and in the course of her employment? I submit that the only person off-

30 handed that I can think of that would come within those provisions in such a situation as this would be, for instance, a maid who is twenty-four hours duty or something of that sort. I believe there are cases which have held that, but in this case this woman testified very definitely as to her working hours and she was not on duty at the time this accident happened and this accident did not arise by reason of the fact that she was employed as

*Motion to Dismiss Petition.*

a dressmaker, if we can go so far as to say she was, but it arose by reason of something which is common to our living conditions, let us say, and not from something which would not have occurred but for her employment. That thing could have happened in her own home or it could have happened any place else, and she was not there by reason of her employment, because she intended to leave the next day. She stated that she would not stay there after breakfast or church and that she was going to leave then. She was all through. 10

Mr. Pascarella: I would like to interrupt. That was on February 21st.

Mr. McEnroe: If we go so far as to say—if we even go so far as to say that this was employment, then how can you say that the accident arose out of or by reason of the employment? So I submit on those grounds, sir, that there should be a dismissal of the petition in this case. 20

The Court: I will deny the motion.

Mr. McEnroe: I think the next thing for us to do is to read into evidence the transcript of the respondent's witness, Joseph Pfeiffer, the same man.

The Court: Well, it is almost four o'clock and suppose we discontinue at this time. 30

**Certificate of Court Stenographer.**

I Hereby Certify the foregoing to be a true and accurate transcript of the testimony in the above matter, as taken stenographically by me, at the time, place and date hereinbefore set forth.

M. D. FLYNN,  
Court Reporter.

10

**Certificate of Deputy Commissioner.**

I Hereby Certify the foregoing to be a true and correct transcript of the testimony in the above matter, taken before me at the time, place and date hereinbefore set forth.

CHARLES E. CORBIN,  
Deputy Commissioner.

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**Testimony.**

NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU.

Newark, Essex County District.

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MARY JASNIG,  
Petitioner,

vs.

WOLFGANG MARIE WINTER,  
Respondent.

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10

January 10, 1934.

Before—Honorable CHARLES E. CORBIN,  
Deputy Compensation Commissioner.

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## APPEARANCES:

FRANK PASCARELLA, ESQ., for the Petitioner.

WILLIAM O. B. McENROE, ESQ., for the Respondent.

Mr. McEnroe: Your Honor, we have the transcript of the Respondent's witness, Joseph Pfeiffer.

30

The Court: I have it here (indicating).

Mr. McEnroe: That is another transcript. He also appeared as a respondent witness.

The Court: Is that to be read into the record?

Mr. McEnroe: Yes, sir. This is a transcript of the respondent's witness, Joseph Pfeiffer, taken before William C. O'Brien, a Supreme Court Examiner, at the office of William P. Braun, on Oc-

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*Joseph Pfeiffer—Direct.*

tober 19, 1933, in the presence of Counsel for both parties.

The witness having been sworn, the direct-examination was conducted as follows:

“Q. Mr. Pfeiffer, where do you live now? A. I live 84 Kenwood Place, East Orange.

10 Q. Were you related to Wolfgang Marie Winter during her lifetime? A. Well, a far relation, you know.

Q. A distant relation? A. Yes, a distant relation.

Q. Where did you live in 1932? A. 1932. I lived at 90 Kenwood Place, East Orange.

Q. Was that where Mrs. Winter lived? A. Yes, that was the house.

Q. Did you make your home with her? A. Yes, I did.

20 Q. Were you living there in February and March of 1932? A. Yes, I was.

Q. Were you living there when Miss Jasnig met with her accident? A. Yes, I was.

Q. What time of the day did that accident happen? A. I think it was between two and three o'clock in the morning.

Q. That was on March 1, 1932? A. Yes, it was.

Q. Were you around the house the day before?

30 A. Yes, I was.

Q. During the daytime? A. Yes.

Q. How much of the day did you spend there?

A. Well, I was there almost all day long.

Q. Did you see Miss Jasnig there during the day? A. Well, I did, yes.

Q. Did you see what she was doing? A. Well, yes, now and then, you know, she was working upstairs in the room, for herself you know.

40 Q. Do you know what room she was working in? A. Yes, certainly.

*Joseph Pfeiffer—Direct.*

Q. What room was it? A. What room was it? How can I tell you, you don't know the house.

Q. What kind of a room was it, was it a room used as a bedroom or a sitting room or sewing room or what? A. Yes, there was a bed in it, Miss Jasnig slept in the same room. We had a radio in there and a writing desk.

Q. Is that where she was working? A. Yes. 10

Q. What was she doing there? A. She was sewing there.

Q. Did she continue to sew the entire day before she was hurt? A. No, she stopped already at around five o'clock, I think it must have been around that time because—yes, it must have been early in the afternoon, I am sure it was.

Q. Did you notice what she had there by way of paraphernalia or sewing materials of her own? A. You mean up in her room? 20

Q. Yes. A. I know Mrs. Winter and her, I think, went shopping and bought the cloth.

Q. I don't mean the cloth, the patterns and what not? A. Well, they were her own, the patterns.

Q. Did you notice what she brought them in? A. She had a satchel, you know, like a small hand satchel.

Q. Did you see that satchel after she had finished working? A. Yes, it was laying on top of the sewing machine, I remember. 30

Q. What have you to say as to whether or not it was packed? A. Well, it was packed because it was stripped, you know, it was closed.

Q. Then after she finished, was anything said by her about what she was going to do? A. Well, she informed us already at noontime that she would go home that night, you know, as soon as she gets ready. 40

*Joseph Pfeiffer—Direct.*

Q. What did she say about going home? A. Well, she tells us on the table that she decided differently.

Q. No, I mean at noontime you say she informed you she wanted to go home? A. Yes, she wanted to go home and join some school to learn how to make patterns or something like that and do  
10 some shopping on the way home.

Q. You say that was at noontime? A. That was at noontime, yes.

Q. Do you know where she had her lunch or dinner that noon? A. On the table, you know, we all ate together.

Q. Was anything said about supper meal time, by Miss Jasnig at that time or at any time later? A. Well, on the supper table I heard her say—

Q. No, I mean was anything said about the supper meal or when it was to be had? A. No, there  
20 was nothing said, no.

Q. Did Miss Jasnig say anything about changing the time of the supper meal? A. Well, she did not but she said as soon as she is ready she will, you know, like to go home.

Q. And you say she did finish her work early in the afternoon? A. Yes, she did, anyhow earlier than usual.

Q. Now, just answer this yes or no; do you  
30 know whether she was paid for her work that day? A. Yes.

Q. How do you know that she was paid? A. Because I saw Mrs. Winter having the money in her hand when she went to the table.

Q. When was that? A. That was just before we ate, you know, it must have been five o'clock.

Q. Before you ate what meal? A. We were just sitting down to eat at five o'clock, around  
40 this time.

*Joseph Pfeiffer—Direct.*

Q. Did you usually eat at five o'clock? A. No, we did not.

Q. What time did you usually eat your supper? A. Six or half-past six.

Q. Was there any special reason for eating at five o'clock on this occasion? A. Yes, there was, because Miss Jasnig was finished at that time and she wanted to go home in time, so we ate right away. 10

Q. You say you know that she was paid before you sat down to eat? A. Yes, just before we sat down to the table, I can recall that for sure, I am positive of that.

Q. I don't suppose you know how much it was, do you? A. No, I don't know that.

Q. During the course of the meal was anything done about changing the plans—withdraw that. During the meal did Miss Jasnig say anything about changing her plans or were any other arrangements made than what she had already made for going home early? Just answer that yes or no, did she say anything? A. Yes, sure she did. 20

Q. What did she say?" Meaning Miss Jasnig.

"The Witness: Miss Jasnig asked Mrs. Winter if she would mind if she stayed over night because she wanted to do some shopping on her way home, she wouldn't have to come to the city again. I believe she lived outside—you know, it must have been the Bronx. 30

*By Mr. Braun:*

Q. What do you mean by the city, did she say? A. She wanted to buy something, probably in Gimbels, that is where she usually bought.

Q. Did she say where she was going to shop in, what city? A. Well, in New York. 40

*Joseph Pfeiffer—Direct.*

Q. Was she given permission to stay then? A. Well, you know, it is hard to say no."

Mr. Pascarella: I moved that that be stricken and Mr. Braun consented to that.

Mr. McEnroe: (Continuing):

"Q. Was she given permission? A. Yes."

Mr. Pascarella: I objected to that question on  
10 the ground that permission is a conclusion.

The Court: Objection sustained.

Mr. McEnroe: (Continuing):

"Q. Well, what did Mrs. Winter say when Miss Jasnig asked whether she could stay over night so she could shop in New York the next day? A. Well, she probably, I am not sure what she said, you know, but she probably said she wouldn't mind it.

Q. Did she stay as the result of that conversa-  
20 tion? A. Certainly she did.

Q. It was early the next morning you say that she had the accident? A. Yes, it was; it must have been around three o'clock.

Mr. Braun: Take the witness.

*Cross-examination by Mr. Pascarella:*

Q. How many days had Miss Jasnig been work-  
30 ing for Mrs. Winter consecutively before the date of this accident? A. Before the accident? Before she had the accident?

Q. Yes. A. Oh, I believe once she worked two days and then one.

Q. Now, we will put it this way: she worked that day? A. Yes.

Q. And then early, the following morning early, she had the accident? A. Yes, that's right.

Q. Did she work the day before that day? A.  
40 Yes.

*Joseph Pfeiffer—Cross.*

Q. In other words she worked two consecutive days? A. No, she didn't.

Q. Just for one day? A. Just for one day.

Q. The week before she had worked for her again? A. Yes.

Q. How many consecutive days did Miss Jasnig work, do you remember?"

Mr. Pascarella: An objection was made on the ground that it is not part of the same contract. 10

The Court: I will allow it; it is cross-examination.

Mr. Pascarella: The witness said, "What do you mean by consecutive?"

"Mr. Pascarella: One day after the other without stopping."

Mr. McEnroe: There was an objection. Just a minute. (Continuing):

"Mr. Braun: I would like to complete my objection, on the ground it is immaterial what she may have done on a previous occasion under another contract." 20

The Court: I will deny the objection.

Mr. Pascarella: The witness said, "I think she worked there once, you know, that was two days, that past week."

Mr. McEnroe: (Continuing):

"Q. The week before? A. The week before. 30

Q. She worked two days, one day after the other? A. Yes.

Q. At noontime of the day she worked before the accident, and that is the only day we will refer to unless I change it in my questioning— A. Yes.

Q. Miss Jasnig said she was going to go home that night, she wanted to have early dinner because she had to go to the school? A. Yes, that's right. 40

*Joseph Pfeiffer—Cross.*

Q. Then she worked the rest of the afternoon until she finished and then she packed her trunk, is that correct? A. Yes.

Q. Then at night when you sat down to eat you saw Miss Jasnig get some money from Mrs. Winter? A. Yes, I did.

Q. You saw something pass? A. Yes, I saw it.

10 Q. Did Mrs. Winter say if it was for the other day's work? A. She didn't say so but as a rule of the house everybody worked there got paid that night, no matter whether they worked a week or two weeks, they were always paid at night, in cash.

Q. So when Miss Jasnig got this money it was for the pay of that day's work? A. Yes.

20 Q. Then during the course of the meal Miss Jasnig said, "I think I will stay over," or in effect, said that? A. Yes.

Q. "Until tomorrow so I can do some shopping before I go home"? A. Yes.

Q. Did she say where she went to school for this designing? A. No—well, in New York.

Q. She didn't say when she was going to go, whether in the morning or at night? A. No, I understood her school must have been in the afternoon.

30 Q. They didn't make any arrangement to work the next day for Mrs. Winter? A. No, she was finished altogether.

Q. Finished? A. Yes.

Q. Do you know what she did? A. I think she made two dresses.

Q. For Mrs. Winter? A. For Mrs. Winter, yes.

Q. There was no agreement made between Mrs. Winter and Mrs. Jasnig to work the next day, for Mrs. Winter? A. No, there was not.

40 Q. Did Miss Jasnig say what time she was go-

*Mary Jasnig—Rebuttal—Direct.*

ing to leave the next morning? A. No, she did not, not exactly. The hour was set early, you know.

Q. Now, when Miss Jasnig asked Mrs. Winter could she stay what did Mrs. Winter say? A. Well, she said she wouldn't mind it, you know.

Mr. Pascarella: That's all.

10

Mr. Braun: That's all.")

The Court: Do you close your case on that testimony?

Mr. McEnroe: Yes.

Mr. Pascarella: I will call Miss Jasnig.

---

MARY JASNIG, the Petitioner, recalled in rebuttal, having been previously duly sworn, testified as follows: 20

*Direct-examination by Mr. Pascarella:*

Q. On the day you worked before the accident and while you were having your dinner, did Miss Winters give you any money for that day's pay?

Mr. McEnroe: I object to that as not proper rebuttal. It has already been testified to by the petitioner under her direct case. I object to it on the second ground that it is an attempt to have the witness testify to her transaction with the deceased. 30

Mr. Pascarella: This is to contradict the statement made by Joseph Pfeiffer, the witness for the respondent.

Mr. McEnroe: That has already been contradicted by the direct testimony in the petitioner's case. The petitioner testified as to how she was paid and all the circum- 40

*Mary Jasnig—Rebuttal—Direct.*

stances surrounding it. We came in by our witnesses and our testimony and denied it.

Mr. Pascarella: We probably never denied it. Here is the statement of facts—

The Court: You can only bring out new matter. Now, whether this is new matter—

10

Mr. Pascarella: It is new matter brought out by the respondent that she was paid at a certain specific time.

Mr. McEnroe: It has already been testified to by the petitioner when she was paid.

Mr. Pascarella: It is absolutely new matter because it states—Pfeiffer states he saw money passed. That has not come out in our case.

20

The Court: She has testified to that. Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. Before you had your dinner on the twenty-eighth of February—twenty-ninth of February, in the evening, was your satchel or bag fully packed?

30

Mr. McEnroe: I object, if the Court please, on the ground it is not proper rebuttal. She also testified as to the facts on her direct-examination that her bag wasn't packed, she said, on the twenty-ninth of February.

Mr. Pascarella: I don't remember any testimony of that kind. Here is a set of circumstances, set up by the respondent that she was ready to leave on that day. I believe that we are entitled to contradict all the testimony of Joseph Pfeiffer categorically.

40

*Mary Jasnig—Rebuttal—Direct.*

The Court: I will allow her to answer yes or no.

Mr. McEnroe: Exception, please.

*By Mr. Pascarella:*

Q. Was your bag packed? A. It was not packed.

Q. Did you at noon time have any conversation with Mrs. Pfeiffer as to making an arrangement to leave for New York shortly after dinner tonight? A. I never— 10

Mr. McEnroe: I object on the ground it is not proper rebuttal. That has already been testified to.

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. Did you at the dinner table in the evening have any conversation with Mrs. Winter in the presence of Joe Pfeiffer in which conversation you asked Mrs. Winter for permission to stay over night? 20

Mr. McEnroe: I object, if the Court please, on the ground it is not proper rebuttal. It has been testified to she was invited to stay there all night. 30

The Court: Objection sustained.

Mr. Pascarella: I take an exception. This witness didn't testify that she was invited to stay.

Mr. McEnroe: Somebody did.

Mr. Pascarella: This witness testified it was part of her employment to stay over night. There is an attempt on the part of the respondent to show she was merely a 40

*Mary Jasnig—Rebuttal—Direct.*

guest. I think she is entitled to contradict that inference.

The Court: This is not rebuttal. It has been all brought out by the petitioner.

Mr. Pascarella: I take an exception to your Honor's ruling.

10 *By Mr. Pascarella:*

Q. In the conversation that you had with Mrs. Winter in the presence of Joe Pfeiffer at luncheon that day, did you ask Mrs. Winter to have an early supper or dinner so that you could go to New York? A. Never.

Q. At the dinner table, before you sat down to eat, did Mrs. Winter give you any money? A. No.

20

Mr. McEnroe: I object, if the Court please, on the ground it has been already testified to by the petitioner when she received her pay. This is not proper rebuttal testimony.

Mr. Pascarella: She never testified when she received her pay for the last day's work. I don't think you will find that in any of the testimony.

The Court: She did.

30

Mr. Pascarella: When did she say, your Honor—

The Court: "I got four dollars a day paid by the respondent." I didn't put the rest down.

Mr. Pascarella: Well, I know this was the rate of pay; she didn't say whether she received that four dollars.

The Court: She said she did.

Mr. Pascarella: I don't think she did.

40

*Mary Jasnig—Rebuttal—Direct.*

The Court: Objection sustained. Don't argue.

*By Mr. Pascarella:*

Q. When were you paid for this last day's work?

Mr. McEnroe: I object on the ground it is not proper rebuttal. 10

The Court: Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. Did you say to Mrs. Winter in the presence of Mr. Pfeiffer that you wanted to stay over night because you wanted to do some shopping early?

A. No.

Q. (Continuing) In the morning at Gimbel's?

A. Never. 20

Mr. McEnroe: Objected to as not proper rebuttal. That circumstance has already been testified to by the petitioner.

The Court: I will allow it.

Mr. McEnroe: Exception.

The Witness: Never.

The Court: The answer is, "Never"?

The Witness: No.

*By Mr. Pascarella:* 30

Q. Did Mrs. Winter say to you in the presence of Mr. Pfeiffer, when you requested permission to stay over night, that she would not mind if you did stay?

Mr. McEnroe: I object to that, if the Court please, on the ground that it is an attempt by Counsel to have a transaction with the decedent brought out by this witness. 40

*Doris Meyer—Rebuttal—Direct.*

The Court: I will allow the question.

Mr. McEnroe: Exception.

The Court: The answer is no?

The Witness: No.

Mr. Pascarella: That is all.

The Court: Cross-examine.

Mr. McEnroe: No questions.

(Witness excused.)

10

DORIS MEYER, called in rebuttal, having been previously duly sworn, testified as follows:

*Direct-examination by Mr. Pascarella:*

Q. You testified on direct-examination that you knew Mrs. Winter for— A. Yes, sir.

20 Q. (Continuing)—a good many years and you know all the members of her family? A. Yes.

Q. Do you know her son Charles? A. Yes, sir.

Q. After Miss Jasnig's accident did Charles come to your store in East Orange? A. Yes, in Orange.

Q. In Orange? A. Yes.

Q. Did he bring any money? A. He brought me five dollars and paid me for Miss Jasnig—

30 Mr. McEnroe: Just a moment. I ask that the witness respond to the question, yes, did, and that is the answer.

Mr. Pascarella: "He brought me five dollars." That is what she said.

*By Mr. Pascarella:*

Q. When he brought you five dollars, what did he say to you?

40

Mr. McEnroe: I object to that, if the

*Doris Meyer—Rebuttal—Direct.*

Court please, on the ground it is not proper rebuttal. It is not rebutting any testimony that has been brought out.

The Court: Objection sustained.

Mr. Pascarella: Well, it is rebutting the testimony of the witness Pfeiffer. He says that she was paid, that the petitioner was paid at the end of the day, while they were having their dinner. 10

The Court: It is not rebuttal. Objection sustained.

Mr. Pascarella: I take an exception.

*By Mr. Pascarella:*

Q. When Charles Winter brought you this money, did he say to you—what did he say?

Mr. McEnroe: Objected to on the ground it is not proper rebuttal. 20

The Court: Objection sustained.

Mr. Pascarella: I take an exception. That is all.

Mr. McEnroe: That is all.

(Witness Excused.)

Mr. Pascarella: I ask at this time, if the Court please, for an adjournment so I could have Charles Winter present to testify to the payment of five dollars to Miss Meyer to be given to Miss Jasnig for her pay on the day she was injured. 30

Mr. McEnroe: I don't see how the testimony could be allowed.

The Court: I will deny the motion. It is not rebuttal.

Mr. Pascarella: I take an exception.

Mr. McEnroe: Now, may it please the Court, I 40

*Motion for Dismissal of Petition.*

would like to move again at this time for a dismissal of the petition upon these grounds:

First, upon the ground that there is no proof of employment by the respondent, of the petitioner.

10 Secondly, upon the ground that such employment, if such employment be found, can be nothing more than casual employment.

Third, upon the ground that the accident did not arise out of and in the course of employment with the respondent.

Fourth, upon the ground that by the testimony just adduced, it has clearly indicated that this woman is an independent contractor, and hence does not come under the terms of the Workmen's Compensation Act.

20 Fifth, upon the ground that the accident occurred too long after the employment had ceased.

Enlarging upon those grounds, I would like to point out to the Court, with respect to the employment, that there has not been proper proof adduced before the Court that this woman was an employee of Mrs. Winter. There has been such testimony as would enable a person to infer that certain things had occurred. There has been no competent testimony before your Honor to the effect that there was any actual employment under the terms of the Workmen's Compensation Act.

30

Now, with respect to the question of employment, if we go so far as to say that the petitioner was an employee, that employment was certainly nothing more than of a casual nature.

We find that this woman worked for Mrs. and that when Mrs. Brentano became sick at that particular time Mrs. Winter wanted a couple of  
40 dresses made—three or four dresses, I forget the

*Motion for Dismissal of Petition.*

exact amount; that Mrs. or Miss Jasnig was referred to Mrs. Winter as a dressmaker for the purpose of making those dresses. Now, as I pointed out before, it is my opinion, that casual employment is not employment which arises by chance, and which would, of course, immediately dismiss this petition, but employment which the occasion for arises by chance. I think it can be clearly shown that in the ordinary course of human events a woman in a private household does not conduct the business of having dresses made, either for herself or for anybody else, unless she is doing it for the purpose of selling those dresses. There is no testimony in this case that this woman was in business. The testimony all indicates that the woman was having a few dresses made for her own personal use. She had to get someone to make them and she called in a dressmaker, a person who says she has been in the business the last twenty-nine years. 10

Now, even if we go so far as to assume there was real employment here, it has been testified to by Miss Jasnig herself that her employment ceased each day that she was there at around five, six or seven o'clock, and that after the employment ceased, either she was invited to stay there or she asked to stay there; we can't seem to determine which, because of the kind of testimony; we can't quite understand it, at least I could not, but she did say that her employ ceased at a certain time. She wasn't on twenty-four hour duty. She was there from a certain hour in the morning until a certain time at night as a dressmaker, and after ceasing her employment during that day she went upstairs to her room and at three o'clock in the morning she had to get up from the room to go to the bathroom, and while no her way she falls. 20 30 40

*Motion for Dismissal of Petition.*

Now, that accident, I submit, sir, did not arise out of or in the course of her employment, either one. I don't see how it could have. It certainly didn't arise out of the employment. She wasn't walking from her room to the bathroom by reason of her employment, nor was she going to the bathroom by reason of her employment.

10 She was there either by express invitation of the owner, or by imputation, but she wasn't there by reason of the fact that she was a seamstress. So her accident did not arise during her employment because her employment was for a certain, specific job, and her job was between certain hours, between half-past eight in the morning, until five, six or seven at night—I forget the exact hour.

20 Now, as far as this independent contractor is concerned, I put that in the record merely because there has been testimony brought out which I would not want to neglect. This woman testified that she has been a dressmaker or seamstress ever since she came to this country, twenty-nine years ago, and she has been working for and she worked for Mrs. Brentano and was evidently a professional seamstress. She went to Mrs. Winter with her satchel, she had her own patterns, she came there, evidently cut out the dresses, did all the work  
30 herself, and the only work apparently which Mrs. Winter did was to go out and buy the material which she wanted to use now and then, but this woman sat down, cut it out, put it together and made the dresses. Now, I say she wasn't employed. I say, if your Honor please, if the finding is that she was employed, it was a casual employment, and furthermore, if it is found that she was employed in her work and the employment  
40 was within the terms of the Compensation Act,

*Motion for Dismissal of Petition.*

then the accident did not arise out of and in the course of her employment. I say that the woman was an independent contractor and hence, does not come within the terms of the Act.

Mr. Pascarella: In answer to that, if the Court please, in the first place, as far as employment is concerned, it is admitted in the respondent's answer. The respondent says in answer to question twenty-five, "If wages were fixed by the hour, state rate per hour?" The answer to that is, "Petitioner was employed at four dollars per day." 10

Now, I take it she was employed as an employee of the respondent.

The next point, on the question of casual employment, it has been held in this state in many cases, and starting with the case of Sabella vs. Brasileiro, 86 Law 505, wherein—

The Court: Mr. Pascarella, I have reached my decision in this matter. I don't think it is necessary to hear your defense in the matter. 20

I am finding that the petitioner's disability is the result of an accident arising out of and in the course of the employment. On the first question brought out, the fact is that she was employed. I believe the evidence is such that I am finding as a fact, by legal inference, that there was employment; the answer has also stated that she was employed, but the contention is that it was casual employment. 30

The next question, as to the question of casual employment, if we will look up the definition in the Act, we will find that casual employment is that "which shall be defined, if in connection with the employer's business as employment the occasion for which arises by chance or is purely accidental." Now, this employment was not in con- 40

*Motion for Dismissal of Petition.*

nection with the employer's business. We then come to the other part of the definition of casual employment which says, "Or if not in connection with any business of the employer, as employment not regular, periodic or recurring."

I find that this wasn't casual employment because it was regular employment.

10

The next question is whether the accident arose out of the employment. I am finding that it did, first because we have a list of cases that hold that a person going to the toilet and injured, that that injury arises out of the employment. The second part of that question, whether she was employed at the time the accident happened, I believe it is the Court's interpretation—and I do find—that where one is employed, as in this case to work and to stay in the house, then the employer having control over the hazards of the house is liable for any accident while the employee is injured in the house.

20

On the question of independent employment, I am finding that the relationship was not independent employment because I believe I have the right to reach the inference that the petitioner was under the control of the respondent at the time of her employment.

30

I therefore find that the petitioner suffered an accident arising out of and in the course of her employment with the respondent. It is now a question of damages, which we agreed at the time that we would not go into. I will now leave it to the parties whether you can reach an agreement on the damages or whether at a later date you desire that I take testimony on the same.

Mr. McEnroe: Of course, we agreed at the time that the case, in the event a decision was reached,

40

*Motion for Dismissal of Petition.*

it may be necessary to appeal the decision before  
the medical is taken care of.

(Discussion between Court and Counsel.)

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**Certificate of Deputy Commissioner.**

10

I Hereby Certify that the foregoing is a true  
and accurate transcript of the testimony as taken  
stenographically before me at the time, place and  
date hereinbefore set forth.

CHARLES E. CORBIN,  
Deputy Compensation Commissioner.

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**Certificate of Court Stenographer.**

20

I Hereby Certify that the foregoing is a true  
and accurate transcript of the testimony as taken  
stenographically by me at the time, place and  
date hereinbefore set forth.

JACOB BAER,  
Court Reporter.

30

40

*Decision.*

## NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU.

Newark, Essex County District.

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 MARY JASNIG,  
 Petitioner,

vs.

 WOLFGANG MARIE WINTER,  
 Respondent.
 

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April 9, 1934.

 20 Before—Honorable CHARLES E. CORBIN,  
 Deputy Compensation Commissioner.

## APPEARANCES:

FRANK PASCARELLA, ESQ., for the Petitioner.

WILLIAM P. BRAUN, ESQ., by ARTHUR MEAD, ESQ., for the Respondent.

30

The Court: Now, in this case the matter has already been tried and I found liability. You are now here to fix the amount of damages. Do I understand that you have agreed?

Mr. Pascarella: Yes, they agreed to seventy-five percent disability.

The Court: How about temporary?

Mr. Mead: I don't know until your Honor mentioned it. Did the petitioner go into that?

40 Mr. Pascarella: We just went into the question of liability. Temporary is for one year.

*Dr. William J. Arlitz—Direct.*

The Court: Make it fifty weeks instead of fifty-two weeks, and permanent disability three hundred and seventy-five weeks; are you willing to agree to fifty weeks?

Mr. Pascarella: She was under active medical treatment; she was in the hospital since and has been under active medical treatment for massages.

10

The Court: The accident is March 1, 1932?

Mr. Pascarella: Yes.

Mr. Mead: Fifty weeks is all right.

The Court: Now, suppose we present the evidence of the doctors. One doctor testifying for each side as to his findings.

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DR. WILLIAM J. ARLITZ, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

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*Direct-examination by Mr. Mead:*

Q. Doctor, you are a physician licensed to practice in New Jersey, and for how long? A. Over forty years.

Q. Your specialty in compensation work is for how long? A. Twenty-five or more years, I confined my activities to service and treatment of injuries.

30

Q. Did you examine the petitioner Marie Jasnig at my request? A. Yes, sir.

Q. When? A. The seventh day of February, 1934.

Q. Will you please give the Court your findings; give us an expression of opinion as to what is a fair amount of permanent disability sustained by this petitioner as a result of the accident?

40

*Dr. William J. Arlitz—Direct.*

A. You want me to go into the subjective findings?

The Court: No.

10 The Witness: This woman sustained a fracture of the second lumbar vertebra; she sustained an injury to the left upper extremity; she had in addition a complication of arthritis which is due to other causes than trauma but because of this, I think she has a disability of seventy-five percent of total.

*By Mr. Mead:*

20 Q. Did you confer with Dr. Szerlip who treated her on her behalf? A. Yes. This woman is able to get about; she has some difficulty but has the use of the right upper extremity. This is not a total disability, however.

(Witness Excused.)

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DR. LEOPOLD SZERLIP, called as a witness on behalf of the Petitioner, being first duly sworn, testified as follows:

30 *Direct-examination by Mr. Pascarella:*

Q. Dr. Szerlip, are you a duly licensed physician practicing in the City of Newark? A. Yes, sir.

Mr. Mead: I admit the doctor's qualifications.

*By Mr. Pascarella:*

40 Q. Have you had any experience in compensation cases dealing with the bones? A. I have.

*Colloquy.*

Q. Did you examine Mary Jasnig at my request? A. I did on March 29, 1934.

Q. In your examination what did you find as to her condition at that time? A. This patient had a second lumbar vertebra fracture, also a fracture of the left wrist and other injuries to the left arm. There was evidence of a periostitis in the arm and various joints. She has evidence of arthritis of the spine existing a long time complicating the condition at the present time. 10

Q. In your opinion, what percentage of total disability is she suffering from? A. In arriving at this Mrs. Jasnig was of average health and as to work is completely disabled. Her right arm is normal and useful; she can get around with difficulty, but she has no other compensation. This is complete disability. I feel however, that the disability offered of seventy-five percent would adequately compensate her. 20

Q. When you examined her at my request what was your charge? A. \$25.

Q. What is the charge for testimony today? A. \$50.

Mr. Pascarella: That is all.

Mr. Mead: That is all.

The Court: How about the rate? 30

Mr. Pascarella: The testimony shows she was getting four dollars a day.

The Court: Four dollars a day on the petition, that is \$28 per week.

Mr. Pascarella: Yes, sir, I think four dollars a day.

The Court: I will find judgment in this matter for temporary disability of fifty weeks at the rate of \$13.33, permanent disability seventy-five percent of total which will be 375 weeks at \$13.33. 40

*Colloquy.*

Now, what medical expenses, just Dr. Szerlip?

Mr. Pascarella: No, I have Dr. Carlucci fifteen visits, \$75.

Mr. Mead: May I suggest that you give them to the Court and we will be bound by your Honor's findings? I will indicate any objection we may have. Will you go over them?

10

The Court: This is all for treatment?

Mr. Pascarella: Some are and some are not.

The Court: You will present each one to me. We will have an adjournment and then we will come back and you can present them to me.

(At this point an adjournment was taken.)

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AFTERNOON SESSION.

20

The Court: You may submit the medical bills for me to allow or not.

Mr. Pascarella: I hand you bill of Dr. Carlucci, fifteen house visits, March 15, 1931, to June 1, 1931, five dollars each, total seventy-five dollars.

The Court: Now, that rate is too high. I think it should be three dollars per house visit. I will reduce that to forty-five dollars instead of seventy-five.

30

Mr. Pascarella: Then here is the bill of Professor John G. Gregory, masseur, for ninety dollars for thirty treatments to June, 1932, between May 22 and June 22.

The Court: Just massage? I have no control over that. I won't allow it.

Mr. Pascarella: And here is a bill for a private ambulance from Bellevue Hospital to home March 17, charge of \$15.

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The Court: I have no authority to approve that.

*Colloquy.*

Mr. Pascarella: Here is a bill of \$35 for a back brace.

The Court: She is wearing that brace at the present time?

Mr. Pascarella: Yes.

The Court: I will allow that—that is the Pomroy Company?

Mr. Pascarella: Yes. I show you eight bills from the Hospital of Joint Diseases, for nine weeks treatment between June 28, 1932, and November 14, 1932 at \$3 per day. 10

The Court: You don't question that?

Mr. Mead: No, I don't.

The Court: At three dollars per day, what does that amount to?

Mr. Pascarella: \$189, \$21 a week.

The Court: I will allow the Hospital for Joint Diseases bill of \$189. 20

Mr. Pascarella: Now, there is another element of expenses. This petitioner did not remain at the hospital. She was removed from the Memorial Hospital when the respondent refused to give her any medical treatment. She was removed to Bellevue Hospital. No car was provided by the respondent and she went to the home of her niece where her expenss amountd to \$2 per day, then \$1 a day. 30

The Court: I have no authority to pass on that.

Mr. Pascarella: I take an exception to that.

Mr. Pascarella: There is another element, the injured petitioner had to pay \$25 a month. She had to help pay for her board and lodging and six months rent for the months of March, April, May, June, July and August at \$25 a month.

The Court: I have no authority to pass on that.

Mr. Pascarella: An exception on that. 40

*Colloquy.*

The Court: Now, the attorney fee?

Mr. Pascarella: This case was a difficult question of law that took up considerable time to examine as your Honor well knows. I think I should get the full allowance which is twenty percent of recovery.

10 The Court: I will hear you on that matter.

Mr. Mead: I have nothing to say. We denied any responsibility for the case by proceeding to trial, your Honor decided liability and I don't know what work Mr. Pascarella put on the case. He appeared on three different occasions and I will leave it to your Honor.

20 The Court: There was one entire day in court, so I will decide a counsel fee of \$600 one half by each side, Dr. Szerlip's examination cost is chargeable to the petitioner, I have no authority on that. I will allow Dr. Szerlip one examination and appearance in court, \$10 for the examination and \$25 for testimony, one half by each. You will prepare this judgment?

Mr. Pascarella: Yes.

Mr. Mead: I will consent as to the form, in marking these papers in evidence.

30 (The above mentioned papers, P-1, P-2 and P-3 were received and marked in evidence.)

**Certificate of Deputy Compensation  
Commissioner.**

I Hereby Certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically before me at the time, place and date hereinbefore set forth.

CHARLES E. CORBIN,  
Deputy Compensation Commissioner. 10

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**Certificate of Court Stenographer.**

I Hereby Certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by me at the time, place, and date hereinbefore set forth.

J. C. O'BRIEN, 20  
Court Reporter.

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**Judgment.**NEW JERSEY WORKMEN'S  
COMPENSATION BUREAU.

---

MARY JASNIG,  
Petitioner,

vs.

10 CHARLES A. WINTER, Executor  
of the Estate of WOLFGANG  
MARIE WINTER, Deceased.  
Respondent.

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The above matter coming on for hearing and having been submitted to me for decision, I hereby find and determine as follows:

- 20 1. That this is a proceeding originally brought by Mary Jasnig against Wolfgang Marie Winter, under an act entitled, "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the acts amendatory thereof and supplemental thereto;
- 30 that a petition was filed with the Workmen's Compensation Bureau on the 2nd day of November, 1932, that a copy of said petition was served on Wolfgang Marie Winter, the respondent, on November 23, 1932, at No. 90 Kenwood Place, East Orange, New Jersey; that an answer was filed with said Bureau on the 29th day of November, 1932; that due notice of hearing of said petition and answer was given to the respondent; that during the pendency of said proceeding the said Wolfgang Marie Winter died on the 7th day of July,
- 40

*Judgment.*

1933, leaving a last will and testament in which Charles A. Winter was appointed executor thereof, that said last will and testament was duly probated by the Surrogate of the County of Essex, State of New Jersey, and that said Charles A. Winter duly qualified as executor of Wolfgang Marie Winter, deceased; that a petition was duly filed with said Bureau by said Charles A. Winter suggesting the death of said Wolfgang Marie Winter upon the records of the above-entitled matter, and that said Charles A. Winter, executor aforesaid, be substituted as the respondent herein in the place and stead of said Wolfgang Marie Winter, and that, by an order of the said Bureau, dated August 29, 1933, and duly filed herein, it was ordered that the death of said Wolfgang Marie Winter be suggested upon the records of the above-entitled matter, and that said Charles A. Winter, executor of the estate of Wolfgang Marie Winter, be substituted as the respondent herein; that a trial was had and the matter came on before Deputy Commissioner Charles E. Corbin, and that Frank Pascarella appeared as attorney for the petitioner and William P. Braun appeared as attorney for the respondent, and the following award was made by the Workmen's Compensation Bureau:

2. That the petitioner was employed by said Wolfgang Marie Winter as a dressmaker on or about the 20th and 21st days of February, 1932 and was again employed on the 29th day of February, 1932, for a period of three days, and she continued said employment up to the 1st day of March, 1932; that her duties consisted of sewing and making dresses for the said Wolfgang Marie Winter; that the place of employment was the

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*Judgment.*

home of said Wolfgang Marie Winter, at No. 90 Kenwood Place, East Orange, New Jersey.

10 3. That petitioner, at the time of her injuries, received for her services wages amounting to Four (\$4.) Dollars per day and, in addition to said wages, she received an additional compensation board and lodging for the period that it was necessary for petitioner to remain on the premises of said Wolfgang Marie Winter in order that she might perform her services as such dressmaker, and that five days constituted a week. That the said board and lodging is valued at five (\$5.) dollars per week.

20 4. That at about 3:30 A. M. on the 1st day of March, 1932, petitioner sustained personal injuries as a result of an accident and that said accident occurred on the premises of the respondent aforesaid. That petitioner had retired for the evening and at 3:30 A. M. it was necessary for her to go to the bathroom, which was located on the same floor as the bedroom in which petitioner slept, but at the other end of the building. Petitioner walked along the hall from her room towards the bathroom. There were no lights in the hall. She felt along the wall for the doorway of the bathroom and, finding an open space, mistook it for the bathroom entrance. She walked into  
30 this space, which was really the stairway leading to the floor below, and fell down the stairs. That the said accident arose out of and in the course of the petitioner's employment.

5. That respondent, Wolfgang Marie Winter, had actual knowledge of the occurrence of said injuries.

40 6. That as a result of said accident petitioner received injuries consisting of lacerations of the

*Judgment.*

scalp, fracture of the left wrist, compression fracture of the second lumbar vertebra and injuries to her left shoulder, and that said injuries caused the petitioner a temporary disability which lasted for a period of fifty weeks and that she has a disability permanent in quality and partial in character, which is as follows:

A compression fracture of the second lumbar vertebra, with definite kyphosis, which causes the lumbar curve to be completely eliminated and badly restricts the motions of the spine; the left shoulder is impaired so that there is only a few degrees of motion. The left wrist is held in dorsal flexion and there is only a few degrees of motion and the fingers of the left hand are all held hyper-extended at the metacarpo-phalangeal joints and in slight flexion at the other joints, with very little motion in any of these joints, causing a disability permanent in quality and partial in character, to the extent of seventy-five percent.

7. That said petitioner for needed services incurred the following expenses:

Dr. G. A. Carlucci, #212 East 68th Street, New York City, for medical expenses	\$ 45.00	
Pomeroy Company—for Taylor brace	35.00	30
Hospital for Joint Diseases, 121st Street & Madison Avenue, New York City—for hospital expenses	189.00	
Dr. Leopold Szerlip, #31 Lincoln Park, Newark, New Jersey—for services as witness in behalf of petitioner	25.00	

All of which are of a reasonable value, in the sums

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*Judgment.*

above mentioned, and all of which are to be paid by the respondent.

The petitioner shall, however, pay the additional sum of Ten (\$10.) Dollars to said Dr. Leopold Szerlip for a physical examination and report in order to prepare for his testimony at the hearing.

10 8. I find, therefore, that the petitioner is entitled to compensation for a period of 425 weeks at the rate of \$16.66 per week.

9. The legal adviser of the petitioner is entitled to compensation in addition to his costs allowed by law, in the sum of \$600., to be paid in the following manner: one-half thereof to be paid by the petitioner and one-half thereof to be paid by the respondent.

10. Costs will be allowed to the petitioner.

20 It is, therefore, on this 26th day of April, 1934, ORDERED, that judgment be entered in favor of the petitioner, Mary Jasnig, and against the respondent, Charles A. Winter, Executor of the Estate of Wolfgang Marie Winter, deceased, in the sum of \$16.66 per week for a period of 425 weeks, beginning with the 1st day of March, 1932, and \$594. for medical, hospital, legal and other expenses, as above enumerated, together with costs.

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CHARLES E. CORBIN,  
Deputy Commissioner.

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**Notice of Appeal to Common Pleas.**

Filed 5/24

ESSEX COUNTY COURT OF  
COMMON PLEAS.

NEW JERSEY DEPARTMENT OF LABOR.

WORKMEN'S COMPENSATION BUREAU.

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MARY JASNIG,  
Petitioner.

vs.

CHARLES A. WINTER, Executor  
of the Estate of WOLFGANG  
MARIE WINTER, Deceased.  
Respondent.

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To: FRANK PASCARELLA, Attorney for Petitioner;  
WM. E. STUBBS, Secretary of the Workmen's  
Compensation Bureau;

County Clerk of the County of Essex, or

To Whom It May Concern:

Sirs:

Please Take Notice that the respondent hereby  
appeals to the Court of Common Pleas in and  
for the County of Essex, from the determination  
and judgment of the Workmen's Compensation  
Bureau, made in the above entitled matter on the  
26th day of April, 1934, awarding the petitioner  
compensation for a period of 425 weeks at the  
rate of \$16.66 a week beginning the first day of  
March, 1932, together with medical, hospital, le-

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*Notice of Appeal to Common Pleas.*

gal and other fees as set forth in the aforesaid judgment.

Respectfully,

COX & WALBURG,  
Attorneys for Respondent.

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**Order Fixing Time and Place for Hearing Appeal.**

ESSEX COUNTY COURT OF  
COMMON PLEAS.

20

MARY JASNIG,  
Petitioner-Appellee,

vs.

CHARLES A. WINTER, Executor  
of the Estate of WOLFGANG  
MARIE WINTER, Deceased.  
Respondent-Appellant.

On Appeal  
from Work-  
men's Com-  
pensation  
Bureau.

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On motion of Cox and Walburg, attorneys for respondent-appellant in the above entitled matter, it is hereby ORDERED that the 28th day of June 1934 at 10 o'clock (Daylight Saving Time) in the forenoon be and hereby is fixed as the time, and the Essex County Court House, Newark, County of Essex and State of New Jersey, as the place for the hearing of the appeal in said matter.

WALTER D. VAN RIPER,  
Judge of the Essex County Court  
of Common Pleas.

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**Opinion.**ESSEX COUNTY COURT OF  
COMMON PLEAS.

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MARY JASNIG,  
Petitioner-Appellee,

vs.

WOLFGANG MARIE WINTER,  
Respondent-Appellant.

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On Appeal from New Jersey Department of Labor,  
Workmen's Compensation Bureau.

## APPEARANCES :

For the Petitioner-Appellee appears 20  
FRANK PASCARELLA.

For the Respondent-Appellant appear  
COX & WALBURG, ARTHUR F. MEAD, of  
Counsel.

BRENNAN, J.

This is an appeal from the finding and determination of the Workmen's Compensation Commissioner, in favor of the Petitioner-Appellee. The appeal is grounded on four major propositions. The first, that the Petitioner-Appellee was not an employee, but an independent contractor. The second, that even if she were not an independent contractor, her employment was casual and therefore not within the purview of the Workmen's Compensation statute. The third ground is that the accident did not arise out of and in the course of the employment of the Petitioner-Appellee and the fourth is an objection to the entry of the judgment below by reason of the fact 40

*Opinion.*

as it is alleged, that it was founded on improper and illegal testimony under Section 4 of the Evidence Act, being 2 Compiled Statutes, P. 2218. The grounds of appeal will be dealt with separately.

10 The first ground of appeal seems to me without merit in law upon a reading of the testimony as to the status of the Petitioner-Appellee within the defendant's household. The Petitioner-Appellee, while apparently a seamstress, was not a modiste in the manner commonly accepted by the dictates of present day fashion. She was typical of what had once been a rather large class of persons periodically employed in households by persons of some means but of conservative habit. It was not unusual for seamstresses in many of these households to come frequently and stay for several days, and their employment was a matter frequently of weekly occurrence throughout the year and occupied a substantial part of each week. They were, as I think this Petitioner was, from the testimony, employees not casual in character and subject to the specific direction of their employers as to the manner and method of material to be used and the kind and character of clothing to be constructed. The controlling cases on the question of casual employment are, I think, Mullen v. Walker, 105 N. J. L. 199, Harrington v. Garrison, 168 Atl. 166, and Sabella v. Brasileiro, 86 L. 505.

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The accident it seems to me grows out of and in the course of the employment of the Petitioner and is controlled by the philosophy of reasoning adopted by the Court in Ruckner v. Read, 39 N. J. L. Journal, 48.

With reference to the proposition of the admis-

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*Opinion.*

sion of evidence alleged to be improper, it is to be observed that there is legislative sanction for considerable latitude on the part of the Workmen's Compensation Bureau in cases of this character. That tribunal is not held to the strict canons of evidence established by our statutes and judicial decisions as controlling in the trial of other cases. See the recent case of *Friese v. Nagel Packing Co.*, 110 N. J. L. 588. In that case, as I understand the judicial limitation, it was indicated that hearsay testimony might be received, although it could not be controlling; that is, that the finding or determination must not have its basis solely in hearsay, but there must be other competent evidence to establish the fact.

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A reading of the record in the instant case indicates to me that there was other and competent evidence to enable the referee to find as he did and in the absence of indication that his finding was clearly against the weight of the evidence, it will not be disturbed. *Boesch v. Kick*, 97 L. 92. The appeal is dismissed. Submit determination accordingly and in conformity with the rules of this Court.

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Dated: December 21, 1934.

DANIEL BRENNAN,  
Judge.

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**Finding of Facts and Determination.**ESSEX COUNTY COURT OF  
COMMON PLEAS.

10	MARY JASNIG, Petitioner-Appellee,  against  CHARLES A. WINTER, Executor of the Estate of WOLFGANG MARIE WINTER, Deceased. Respondent-Appellant.	}	On Appeal from Work- men's Com- pensation Bureau.
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The above matter coming on for hearing and having been submitted to me for decision, I hereby find and determine as follows:

- 20 1. That this is a proceeding originally brought by Mary Jasnig against Wolfgang Marie Winter, under an act entitled, "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder", approved April 4, 1911, and the acts amendatory thereof and supplemental thereto;
- 30 that a petition was filed with the Workmen's Compensation Bureau on the 2nd day of November, 1932; that a copy of said petition was served on Wolfgang Marie Winter, the respondent, on November 23, 1932, at No. 90 Kenwood Place, East Orange, New Jersey; that an answer was filed with said Bureau on the 29th day of November, 1932; that due notice of hearing of said petition and answer was given to the respondent; that during the pendency of said proceeding the said Wolfgang Marie Winter died on the 7th day of July,
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*Finding of Facts and Determination.*

1933, leaving a last will and testament in which Charles A. Winter was appointed executor thereof; that said last will and testament was duly probated by the Surrogate of the County of Essex, State of New Jersey, and that said Charles A. Winter duly qualified as executor of Wolfgang Marie Winter, deceased; that a petition was duly filed with said Bureau by said Charles A. Winter suggesting the death of said Wolfgang Marie Winter upon the records of the above-entitled matter, and that said Charles A. Winter, executor aforesaid, be substituted as the respondent herein in place and stead of said Wolfgang Marie Winter, and that, by an order of the said Bureau, dated August 29, 1933, and duly filed herein, it was ordered that the death of said Wolfgang Marie Winter be suggested upon the records of the above-entitled matter, and that said Charles A. Winter, executor of the estate of Wolfgang Marie Winter, be substituted as the respondent herein; that a trial was had and the following award was made by the Workmen's Compensation Bureau;

(a) That the petitioner is entitled to compensation for a period of 425 weeks, at the rate of \$16.66 per week, commencing with the 1st day of March, 1932. 30

(b) That the legal adviser of the petitioner is entitled to compensation, in addition to his costs allowed by law, in the sum of \$600., to be paid in the following manner: one-half thereof to be paid by the petitioner and one-half thereof to be paid by the respondent.

(c) That the petitioner is entitled to be reimbursed for medical expenses and disbursements necessarily incurred, in the sum of \$294. 40

*Finding of Facts and Determination.*

(d) Costs to be allowed to the petitioner.

10 That notice of appeal was filed with the Secretary of said Workmen's Compensation Bureau on the 24th day of May, 1934 and with the County Clerk of Essex County on the 24th day of May, 1934; that an order fixing the time and place for hearing of said appeal was made on the 14th day of June 1934; that notice of the order fixing the time and place for hearing of appeal was served upon the petitioner-appellee on the 14th day of June, 1934; that transcript of the record of the Workmen's Compensation Bureau was duly filed on the 29th day of May, 1934; that the said appeal came on for hearing on the 28th day of June, 1934, at which time a trial was held, in pursuance of the statute in such case made and provided; 20 that said trial was held in the presence of Frank Pascarella, attorney for the petitioner-appellee, and Cox & Walburg, Arthur F. Mead, of counsel, attorneys for respondent-appellant.

2. That the petitioner was employed by said Wolfgang Marie Winter as a dressmaker on or about the 20th and 21st days of February, 1932 and was again employed on the 29th day of February, 1932, for a period of three days, and she continued said employment up to the 1st day of 30 March, 1932; that her duties consisted of sewing and making dresses for the said Wolfgang Marie Winter; that the place of employment was the home of said Wolfgang Marie Winter at No. 90 Kenwood Place, East Orange, New Jersey.

3. That petitioner, at the time of her injuries, received for her services wages, amounting to Four (\$4.) Dollars per day, and, in addition to said wages, she received as additional compensa- 40

*Finding of Facts and Determination.*

tion board and lodging for the period that it was necessary for petitioner to remain on the premises of said Wolfgang Marie Winter in order that she might perform her services as such dressmaker, and that five days constituted a week. That the said board and lodging is valued at Five (\$5.) Dollars per week.

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4. That at about 3:30 A. M., on the 1st day of March, 1932, petitioner sustained personal injuries as a result of an accident and that said accident occurred on the premises of the respondent aforesaid. That petitioner had retired for the evening and at 3:30 A. M. it was necessary for her to go to the bathroom, which was located on the same floor as the bedroom in which the petitioner slept, but at the other end of the building. Petitioner walked along the hall from her room towards the bathroom. There were no lights in the hall. She felt along the wall for the doorway of the bathroom and, finding an open space, mistook it for the bathroom entrance. She walked into this space, which was really the stairway leading to the floor below, and fell down the stairs. That the said accident arose out of and in the course of the petitioner's employment.

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5. That respondent, Wolfgang Marie Winter, had actual knowledge of the occurrence of said injuries.

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6. That as a result of said accident petitioner received injuries consisting of lacerations of the scalp, fracture of the left wrist, compression fracture of the second lumbar vertebra and injuries to her left shoulder, and that said injuries caused the petitioner a temporary disability which lasted for a period of fifty weeks and that she has a

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*Finding of Facts and Determination.*

disability permanent in quality and partial in character, which is as follows:

10 A compression fracture of the second lumbar vertebra, with definite kyphosis, which causes the lumbar curve to be completely eliminated and badly restricts the motions of the spine; the left shoulder is impaired so that there is only a few degrees of motion. The left wrist is held in dorsal flexion and there is only a few degrees of motion and the fingers of the left hand are all held hyper-extended at the metacarpo-phalangeal joints and in slight flexion at the other joints, with very little motion in any of these joints, causing a disability permanent in quality and partial in character, to the extent of seventy-five percent.

20 7. That said petitioner for needed services incurred the following expenses:

	Dr. G. A. Carlucci, #212 East 68th Street, New York City, for medical expenses	\$ 45.00
	Pomeroy Company—For Taylor Brace	35.00
	Hospital for Joint Diseases, 121st Street and Madison Avenue, New York City—for hospital expenses	\$189.00
30	Dr. Leopold Szerlip, #31 Lincoln Park, Newark, New Jersey—for services as witness in behalf of petitioner	25.00

All of which are of a reasonable value, in the sums above mentioned, and all of which are to be paid by the respondent.

40 The petitioner shall, however, pay the additional sum of Ten (\$10.) Dollars to said Dr. Leopold Szerlip for a physical examination and report in order to prepare for his testimony at the hearing.

*Finding of Facts and Determination.*

8. I find, therefore, that the petitioner is entitled to compensation for a period of 425 weeks at the rate of \$16.66 per week.

9. The legal adviser of the petitioner is entitled to compensation, in addition to his costs allowed by law, and the \$600.00 six hundred dollars allowed below, in the sum of \$300.00 to be paid in the following manner: one-half by the petitioner and one-half by the respondent. 10

10. Costs will be allowed to the petitioner.

It is, therefore, on this 14th day of January, 1935, ORDERED, that judgment be entered in favor of the petitioner, Mary Jasnig, and against the respondent, Charles A. Winter, Executor of the Estate of Wolfgang Marie Winter, Deceased, in the sum of \$16.66 per week for the period of 425 weeks, beginning with the 1st day of March, 1932, and \$294. for medical, hospital and other expenses, as above enumerated, together with \$450.00 legal fees and together with costs. 20

DANIEL BRENNAN,  
Judge.

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**Reasons.**

Filed March 13, 1935.

## NEW JERSEY SUPREME COURT.

10	MARY JASNIG, Petitioner-Defendant,  vs. CHARLES A. WINTER, Executor of the Estate of WOLFGANG MARIE WINTER, Deceased. Respondent-Prosecutor.	}	On Cer- tiorari.
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20 Your respondent-prosecutor, by his attorneys, comes and prays that the action of the New Jersey Department of Labor, Workmen's Compensation Bureau, and the Essex County Court of Common Pleas, may be set aside, reversed and for nothing holden, for the following reasons:

1. That the petitioner in compensation, Mary Jasnig, was an independent contractor in her relationship with Wolfgang Marie Winter, deceased.

30 2. That the petitioner in compensation was not an employe of your prosecutor's decedent and therefore not entitled to the benefits of the Workmen's Compensation Act.

3. That the petitioner-defendant, if she had any status of employment in connection with her work for the prosecutor's decedent, was at most a casual employe, which would not entitle her to the benefits of the Workmen's Compensation Act of the State of New Jersey.

40 4. That the petitioner in compensation did not sustain an accident which arose out of and in the course of employment with the prosecutor.

*Reasons.*

5. That there was not sufficient competent legal evidence upon which a judgment could be rendered in favor of the petitioner in compensation and against your prosecutor since the testimony produced on behalf of the petitioner was at most, evidence of transactions with a deceased person and therefore incompetent.

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6. That the Court of Common Pleas of the County of Essex is in divers other respects irregular, unjust, illegal and oppressive to the prosecutor.

Respectfully,

COX & WALBURG,  
Attorneys for Respondent-Prosecutor.

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The first thing I did when I came to the  
place was to look at the map and see  
what part of the country was in  
the hands of the rebels. It was  
not a very large part, but it was  
enough to give me a good deal of  
trouble.

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I then went to the office of the  
Governor and saw the Secretary of  
War. He was a very kind man and  
gave me a good deal of information  
about the situation of the country.

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FOR A WHILE  
I was in the office of the  
Secretary of War and saw  
many of the officers of the  
army.

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I then went to the office of the  
Secretary of the Navy and saw  
the Secretary of the Navy. He was  
a very kind man and gave me  
a good deal of information about  
the situation of the navy.

22

I then went to the office of the  
Secretary of the Interior and saw  
the Secretary of the Interior. He  
was a very kind man and gave  
me a good deal of information  
about the situation of the  
interior.

23

I then went to the office of the  
Secretary of the Treasury and saw  
the Secretary of the Treasury. He  
was a very kind man and gave  
me a good deal of information  
about the situation of the  
treasury.

**Opinion of New Jersey Supreme Court.**

Filed July 22, 1935.

NEW JERSEY SUPREME COURT.

No. 262 MAY TERM, 1935.

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MARY JASNIG,  
Petitioner-Defendant,

vs.

CHARLES A. WINTER, Executor  
&c. of Wolfgang Marie Win-  
ter, deceased,  
Respondent-Prosecutor.

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Argued May 9, 1935: decided 1935.

On certiorari to Essex Common Pleas in a  
workmen's compensation case. 20

Before—JUSTICES PARKER, CASE and BODINE.

For the prosecutor, ARTHUR F. MEAD.

For the defendant-petitioner, FRANK  
PASCARELLA.

The opinion of the court was delivered by

PARKER, J.

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The deceased was a married woman, who em-  
ployed petitioner as a dressmaker to come to her  
house and work there at a stated daily wage, to-  
gether with board and lodging, when the work to  
be done remained incomplete at the close of the  
day. That was the situation on the afternoon of  
February 29, 1932: and after the evening meal  
and a suitable time thereafter, petitioner went to  
bed. In the small hours of March 1, she found  
it necessary to visit the bathroom, on the same

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*Opinion of New Jersey Supreme Court.*

10 floor at the farther end of the hall, which was unlighted, and while making her way thither in the dark, she fell down the stairs and was severely injured. She filed a petition under the Workmen's Compensation Act, and the bureau awarded compensation. On appeal, the Court of Common Pleas affirmed; whereupon, the present writ was allowed.

The first point made is that petitioner was an independent contractor. We do not think so. She was working by the day, in the presence of her employer much of the time and under the supervision and direction of the latter all the time. The employer furnished the materials. Petitioner was paid by the day and presumably hired by the day. She was to finish the particular dress on which she was working, the next day, and was then to start another. She had worked for Mrs. Winter some time previously, and had stayed over the nights of the 18th, 19th and 20th. The employment was in, and not out of, her regular line, as in *Forrester v. Eckerson*, 107 N. J. Law, 156. We think she was within the protection of the act as an employee.

20 The next point is that she was a casual employee. But under the test laid down in *Forrester v. Eckerson*, *supra*, her employment was regular, being "steady and permanent for more than a single piece of work."

30 The third point is that the *accident* did not arise out of and in the course of the employment. This point we think is also not well taken. On the theory, properly supported by the evidence, and adopted as a fact both in the Bureau and in the Pleas, that the employment involved remaining over night, the occurrence of a call of nature was

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*Opinion of New Jersey Supreme Court.*

necessarily involved (see *Sabriskie v. Erie R. R. Co.*, 86 N. J. Law, 266) and the accident arising out of that—which might conceivably be charged to negligence of the employer, though this is not material here—was properly found to have arisen both out of, and in the course of the employment. *Giliotti v. Hoffman Catering Co.*, 246 N. Y. 279. 10

The fourth and last point is that the finding rests on illegal evidence, in that to some extent that evidence related to transactions with a deceased party. Suffice it to say that most, if not all, of such evidence was excluded by the commissioner, and that there still remained sufficient legal evidence to sustain his findings. It may be well to add that we are not referred by the brief to any specific piece of testimony which is challenged as injuriously erroneous. 20

The judgment of the Common Pleas is affirmed.

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**Rule of Affirmance and Remittitur.**

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">MARY JASNIG, Petitioner-Defendant,</p> <p style="text-align: center;">vs.</p> <p>CHARLES A. WINTER, Executor of the Estate of Wolfgang Marie Winter, deceased, Respondent-Prosecutor.</p>	}	On Certiorari.
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20 The court having inspected the transcript and proceedings of the Court of Common Pleas in and for the County of Essex returned with the Certiorari in this cause, and reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same, it is hereby ORDERED that the judgment of the Court of Common Pleas in and for the County of Essex be and the same hereby is in all things affirmed with costs, and the said record remitted to the court below to be proceeded with according to law and the practice of said court.

30 Entered August 5th, 1935.

On motion of  
FRANK PASCARELLA,  
Attorney for Petitioner-Defendant  
in Certiorari.

**Notice of Appeal to Court of Errors and Appeals.**

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">MARY JASNIG, Petitioner-Defendant,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CHARLES A. WINTER, Executor of the Estate of Wolfgang Marie Winter, deceased, Prosecutor-Appellant.</p>	}	<p>On Certiorari. 10</p>
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TO: FRANK PASCARELLA, ESQ.,  
Attorney for Petitioner-Defendant.

Sir: 20

TAKE NOTICE that the prosecutor-appellant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this case.

Respectfully,

COX & WALBURG,  
Attorneys for Prosecutor-Appellant.

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**Grounds of Appeal.**

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	<p style="text-align: center;">MARY JASNIG, Respondent-Appellee.</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">CHARLES A. WINTER, Executor of the Estate of Wolfgang Marie Winter, deceased, Prosecutor-Appellant.</p>	} On Certiorari.
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20 To: FRANK PASCARELLA, Esq.,  
Attorney of Respondent-Appellee,  
165 Broadway,  
New York City.

Sir:

The prosecutor-appellant states the following grounds of appeal:

- 30 1. That the petitioner in compensation, Mary Jasnig, was an independent contractor in her relationship with Wolfgang Marie Winter, deceased.
2. That the petitioner in compensation was not an employer of the prosecutor-appellant and therefore not entitled to the benefit of the Workmen's Compensation Act.
3. That the petitioner in compensation, if she had any status of employment in connection with her work for the appellant's decedent, was at most a casual employee.

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*Grounds of Appeal.*

4. That the petitioner in compensation did not sustain an accident which arose out of and in the course of her employment with the appellant's decedent.

5. That the Supreme Court of New Jersey erred in giving judgment for the respondent-appellee instead of for the prosecutor-appellant for some one or more of the reasons urged in the said Supreme Court of New Jersey. 10

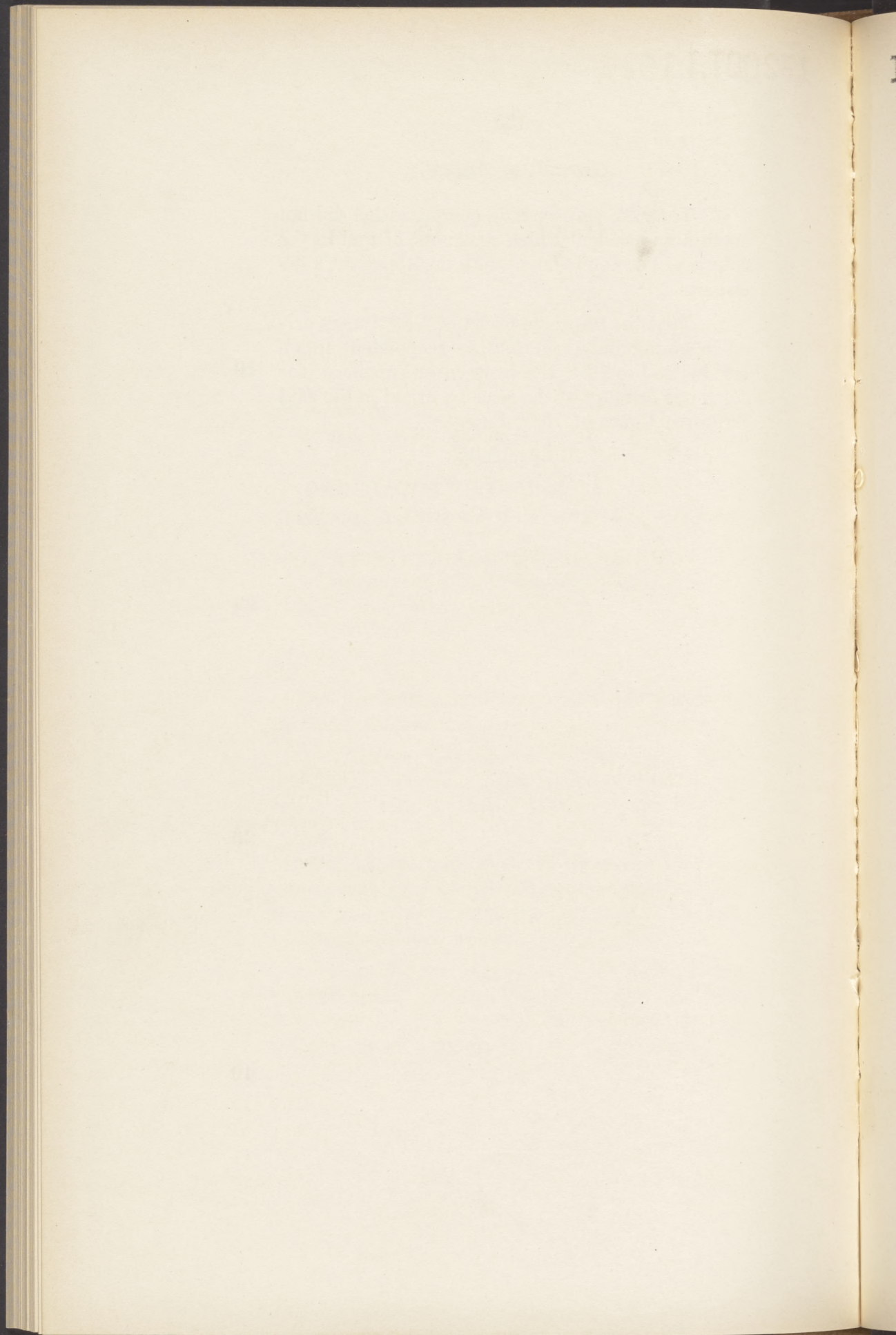
Respectfully,

COX & WALBURG,  
Attorneys for Prosecutor-Appellant.

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## New Jersey Court of Errors and Appeals

MARY JASNIG, Respondent-Appellee.	}	On Certiorari.
vs.		On Appeal from Supreme Court.
CHARLES A. WINTER, Executor of the Estate of Wolfgang Marie Winter, deceased, Prosecutor-Appellant.		

### BRIEF OF THE APPELLANT.

#### Statement of Facts.

This is an appeal from a decision of the Supreme Court affirming a judgment of the Essex County Court of Common Pleas allowing compensation to the respondent-appellee and against the prosecutor-appellant.

The appellee, Mary Jasnig, filed a formal petition in the Workmen's Compensation Bureau against Wolfgang Marie Winter, as employer, on November 2, 1932. She alleged that on March 1st, 1932 at 3:30 A. M. while working at No. 90 Kent Place, East Orange, New Jersey, as a dress-maker, she was going to the bathroom and in so doing fell down a stairway and received injury (S. C., pp. 4-5).

Mrs. Winter filed an answer to this petition stating that the appellee had been engaged to do some sewing work for a period of one day and had stayed overnight at the Winter's house, but

that the appellee was not entitled to compensation because she did not sustain an injury as a result of an accident arising out of and in the course of her employment. Mrs. Winter also denied compensation because, if the appellee was considered to have been employed, the employment was casual (S. C., pp. 9, 10, 11, 12).

Trial of the issues was had before the Workmen's Compensation Bureau in January, 1934. The employer named in the petition died and after suggesting her death on the record, the petition was changed under an order, as against her executor, Charles A. Winter (S. C., p. 15).

As a result of the death of Mrs. Winter the only person in any position to testify as to the circumstances surrounding the transaction of employment, the actual work done and the occurrence of the accident, was the appellee, herself.

It appears from a close examination of her testimony that she resided at 2171 3rd Avenue, New York City and her profession was that of dressmaker (S. C., p. 45, ll. 35-40). She had been working at that business since 1909 and had worked for a great number of people. She stated: "My profession is a dressmaker." (S. C., p. 63, ll. 25-32). Among others, she had served Mrs. Winter. The last time she had done dressmaking for Mrs. Winter was five or six years previous to February, 1932 when the accident occurred (S. C., p. 46, ll. 2-5). She always lived in New York City but had come out to New Jersey at different times to do work for her customers (S. C., p. 65, ll. 30-37). On February 17, 1932 she had been working in New York City. She then came to East Orange to do dressmaking for Mrs. Winter and worked for Mrs. Winter on the 18th, 19th and 20th of February (S. C., p. 66, ll. 1-20). The 20th of February was a Saturday and after finishing

her dressmaking that day she went home and told Mrs. Winter she would not be able to continue the work she was doing because she had to go to Orange to work for Mrs. Brentano (S. C., p. 66, ll. 1-20, 30-40; p. 67, ll. 30-40). On the 22nd of February she went to Mrs. Brentano but ceased her work there near the end of the week. She then went to Mrs. Winter's home in East Orange at about half past eight on the morning of February 29th (S. C., p. 54, ll. 14-16). She had breakfast and started working about nine o'clock. She stopped at five o'clock, put all her sewing things together and went down for supper. After supper the two ladies sat and read the paper until somewhere around nine o'clock and then went to bed (S. C., p. 55, ll. 8-25). Early the next morning it was necessary for the appellee to go to the bathroom. She got out of bed and in going down the hall leaving to the bathroom she fell down some stairs (S. C., pp. 56, 57).

There is no controversy as to medical expense, disability or any of the items of damage since both parties agreed that the issues were as to liability and involved controversies of law.

## ARGUMENT.

### POINT I.

**The appellee, Mary Jasnig, was an independent contractor in her relationship with Wolfgang Marie Winter, deceased.**

The work which the appellee did for a great number of years was that of making and altering dresses. By virtue of the very character of the work of dressmaking and the fact that various individuals, among others Mrs. Winter, engaged Mary Jasnig, bespeaks the fact that Mary Jasnig was to follow her profession using her own methods and without being subject to the detailed control of her customers. The customers were interested only in the accomplished result. Mary Jasnig, herself, characterized her business as a "profession" and the people for whom she worked as "customers":

"Q. How long have you been a dressmaker? A. I have been in this country since 1909 and since then I am working yet as a dressmaker. My profession is a dressmaker.

Q. Since you have been in this country? A. My profession is a dressmaker." (S. C., p. 63, ll. 25-32).

"Q. How long had you been working in New York City? A. In New York City I was working—sometimes I work two days in the family, and sometimes four days, three days, and sometimes only all day. I have a lot of customers, not only one, twenty-three years I am a dressmaker." (S. C., p. 65, ll. 31-40).

It is difficult to lay down any hard and fast rule or principle of law with well-defined borders. From a review of a great number of cases in this state on the question it would appear that there are a number of factors to be considered and yet each factor, of itself, does not determine whether a person is an employe or an independent contractor. One is called upon to consider the method of payment, the control to be exercised by one person over another, the time of work, the method of work or the type of work.

Your appellant contends that the work of dress-making such as Mary Jasnig pursued was, as she stated, in the category of a profession. She would probably consider it an insult to be called a seamstress. She brought to her work of creation and alteration the skill and ability of twenty-three years experience. She was established permanently in New York City. She was so capable in her profession that she could regulate her own work among her customers even to the extent of interrupting her work and going from one customer to another. As she says:

“Q. Now, by the time you got through working on the dresses on February 18th, what time of the day was it? A. When I was through working I think 19th or 20th, it was Saturday, after dinner, I wanted to go home and Mrs. Winter stopped me and she said, ‘Are you going home?’ ‘Yes,’ I said, ‘because you know next week I cannot continue your work. I have to go to Orange, back to work a whole week for Mrs. Brentano. Therefore, I say, I go home, I cannot stay here.’ And then she said to me, ‘Why don’t you wait until he comes home? He comes home late,’ she says. And I says, ‘What do you want me to do?’ She asked me to stay, and I said, ‘Well, I will promise you to stay a little while but

I am not going to stay longer,' and that is the way it happened." (S. C., p. 66, ll. 1-20).

In the case of *Otmer v. Perry*, 94 N. J. L. 73, the Supreme Court held that although a person engaged to repair a well on certain premises was paid on the basis of eight dollars a day, nevertheless

"The work which the petitioner contracted to perform in this instance was of a distinct and separate character in the execution of which he was unhampered and uncontrolled by the views and orders of an immediate superior."

The petitioner in compensation in that case was held by the Supreme Court to be an independent contractor.

This Court in *Kappertz v. The Jerseyman*, 98 N. J. L. 836, was called upon to pass upon the same question. In that case an individual was engaged in the business of welding and repairing machinery. The defendant was a publisher of a newspaper. The newspaper manager called on the plaintiff to make repairs. After an injury there was a suit against the defendant at common law and one of the defenses was that the repairman was an employe and his remedy, therefore, was under the Workmen's Compensation Act. This Court ruled that the Workmen's Compensation Bureau was without jurisdiction and the plaintiff's remedy was at common law. This Court said:

"An independent contractor is defined to be one who, carrying on independent business, contracts to do a piece of work according to his own methods and without being subject to the control of his employers as to the means by which the result is to be

accomplished, but only as to the result of the work.”

The same situation is present in the case of *Boyce v. Matawan School Board*, 3 N. J. Misc. 942. In that case the petitioner was engaged to clean rubbish out of a school. This service was not required under his contract as a janitor. While so doing, he sustained injury. It was held that the petitioner in compensation was an independent contractor.

In the case of *LaTerre v. Skillman*, 7 N. J. Misc. 766, it was held that a painter and paperhanger, although paid by the hour for work done, was, nevertheless, an independent contractor.

Your appellant contends that under all the facts and circumstances in this case, considering the type of work Mary Jasnig performed, the freedom which she exercised in pursuing her profession, even to the extent of fixing her own time for work, the variation in pay, sometimes \$4.00 and sometimes \$5.00 a day, and the lack of control which her customers exercised, she was an independent contractor and the Workmen's Compensation Bureau, therefore, was without jurisdiction to award compensation.

**POINT II.**

**The Appellee, if she had any status of employment in connection with her work for the Appellant's decedent, was at most a casual employe, if an employe at all, and she would, therefore, not be entitled to the benefits of the Workmen's Compensation Act of the State of New Jersey.**

The named employer, Mrs. Winter, was not engaged in any business and consequently under the provisions of paragraph 23(c) as amended by Chapter 93 of the Laws of 1919, the test to be applied is whether or not the employment was regular, periodic or recurring. Certainly, under the facts in this case the employment was not. Mary Jasnig was engaged to do a certain bit of work; namely, make three new dresses. This was the first she had been called upon by Mrs. Winter for a period of five or six years. In order to do this work she called at the Winter home on the 18th and worked February 18th, 19th and 20th. She then stopped working at the Winter home and went over to Mrs. Brentano's in Orange to work for her, despite the fact that the work at the Winter home was not finished. However, at 8:30 on the morning of February 29th, she appeared at the Winter household to work for another day on her original assignment. There was no definite period of time during which she was to work. At most it appears that the time when she did work, it was at her own convenience, spreading her work among her customers. There certainly was no regularity in the work which Mary Jasnig did. It certainly was not periodic and could not be considered as recurring in the sense intended by the legislature. This legislative enactment has

been construed and interpreted by this Court in the case of *Forrester v. Eckerson*, 107 N. J. L. 156. This Court said:

“The words as used in this Act connote that employment is regular when it is steady and permanent for more than a single piece of work; recurring, when the work is to be performed at some future time by the same party without further engagement; and periodic, when the work is to be performed at stated intervals without further engagement.

“In the case under consideration there is nothing to suggest regularity of employment because upon completion of the particular job the plaintiff would return to his usual and regular employment with the Butterine Company, nor is there any testimony that it was in contemplation that he should return to defendant's home at any time, either fixed or indefinite, to do any work. If other work was ever to be done a new employment would be entered into. The employment, therefore, was casual.”

Your appellant submits that the instant case is similar to the above cited case which is even stronger. Under the statement of the Court of Errors and Appeals it would appear that for the entire period when Mary Jasnig worked making these three dresses she would be, if an employe at all, a casual employe. Certainly, if for the entire period she was a casual employe, for the particular day, which she elected to use to finish up her work, she was a casual employe. If Mrs. Winter desired any further dressmaking to be done, a new employment would have to be entered into. Mrs. Jasnig's work, therefore, was not recurring and the facts clearly indicate that it was neither regular nor periodic.

The above cited case, we have said, is a stronger case than the instant case. The facts in that case were that the plaintiff was employed as a painter for a certain company. During that employment he would be sent by executives of the company on three or four occasions to do painting work at the homes of the executives. He was so engaged to work by the president of the company, at least once, about a year before the accident involved. He was paid by the particular executive at the rate which he would receive from the company. It appears in that case, therefore, that payment was made by the week at a certain rate of pay, that the injured was a painter, and that he had done painting for the president of the company previously. Despite these facts the Court of Errors and Appeals held that the employment was casual under the Workmen's Compensation Act.

Your appellant contends that the work of Mary Jasnig for Mrs. Winter in its entirety was casual, and certainly on February 29, 1932 when she unexpectedly returned, she was a casual employe.

## POINT III.

**The Appellee did not sustain an accident which arose out of and in the course of her employment with the Appellant.**

As previously stated, the appellee's profession was that of dressmaker. She, herself, stated that she started work about nine o'clock and finished about five o'clock. After she stopped at five o'clock she put all her sewing things together and went down for supper, and thereafter sat around and read the paper with Mrs. Winter until about nine o'clock, and then retired for the night. Somewhere between three and four o'clock the next morning, for her own personal convenience, it was necessary for her to go to the bathroom, and while so doing she fell down some stairs. How can it be said that an accident occurring under those circumstances was an accident which had anything to do with her work as a dressmaker? Your appellant believes that the Court of Common Pleas overlooked the character and type of work which the petitioner had been doing, and considered the case to be one involving a domestic servant subject to receive orders, or at least be on call for orders by the mistress of the household at any time of the morning, noon or night. On that controversial point, which is one of the most important points in the case, the Judge of the Court of Common Pleas, in his opinion (S. C., p. 118, l. 34) states:

“The accident it seems to me grows out of and in the course of the employment of the petitioner and is controlled by the philosophy of reasoning adopted by the Court in *Ruckner v. Read*, 39 N. J. L. Journal, 48.”

He makes no findings of fact in support of that statement and refers to no Supreme Court or Court of Errors and Appeals opinions. As a matter of fact the case referred to was that of a domestic servant attached to the household for twenty-four hours day in and day out. The fact that the lower court evidently did overlook the character and type of work which the petitioner in compensation was doing is somewhat borne out by his finding on the first ground of appeal as stated in his opinion (S. C., p. 118, ll. 8-23). The judge there states:

“The petitioner-appellee, while apparently a seamstress, was not a modiste in the manner commonly accepted by the dictates of present day fashion. She was typical of what had once been a rather large class of persons periodically employed in households by persons of some means but of conservative habit. It was not unusual for seamstresses in many of these households to come frequently and stay for several days, and their employment was a matter frequently of weekly occurrence throughout the year and occupied a substantial part of each week.”

Certainly, under the testimony in this case there is no basis for any such fact finding. Mary Jasnig did not come to the Winter household frequently nor was she employed frequently or weekly, or throughout a year.

It is interesting to note, also, that the deputy commissioner of compensation in his judgment (S. C., p. 110, at p. 112, l. 32) also made no findings of fact upon which to base his conclusion that “the said accident arose out of and in the course of the petitioner’s employment.”

In a recent case of *Dudley Hall v. Doremus*, 114 N. J. L. 289, Justice HEHER, speaking for the New

Jersey Supreme Court, went into great detail on the same question. As he stated,

“The words ‘out of’ refer to the origin and cause of the accident \* \* \* are descriptive of the character or quality of the accident. The words ‘out of’ connote an accident that is in some sense due to the employment. \* \* \* The legislative purpose was to provide for the risks of accident which are within the scope of the employment in which the workman is engaged. \* \* \* There must be a *causal* connection between the accident and the employment or the former cannot be said to have arisen out of the latter. The accident must have resulted from a risk reasonably appertaining to the employment. \* \* \* Unless the employment is a contributing proximate cause an injury sustained in the course of employment is not compensable.”

In expressing his opinion Justice HEHER examined the earlier cases reported in this State. The leading case in New Jersey on the question is, of course, that of *Bryant v. Fissell*, 84 N. J. L. 72 in which Justice TRENCHARD, speaking for the Supreme Court laid down the basic principle that there must be three specific elements present in order to warrant a recovery under the New Jersey Workmen's Compensation Act. In that case Justice TRENCHARD stated that an accident occurs in the course of the employment if it occurs while the employe is doing what a man so employed may reasonably do within a time during which he is employed and at a place where he may reasonably be during that time. Also, an accident arises out of the employment when it is something the risk of which might have been contemplated by a reasonable person when entering the employment as incidental to it. He further states that

a risk is incidental to the employment when it belongs to or is connected with what the workman has to do in fulfilling his contract of service. Where, in the instant case, is there any accident which arose out of and in the course of Mary Jasnig's employment as a dressmaker? Certainly her errand at three o'clock in the morning did not belong to nor was it in any way connected with her work as a dressmaker and under the test laid down by Justice HEHER and Justice TRENCHARD certainly it had nothing to do with fulfilling her contract of service nor was there any causal connection between the accident and the employment. How can it be said that it was even due to a risk connected with what Mary Jasnig was to do in fulfilling her contract of service? She, herself, stated that she finished her work at five o'clock and thereafter whatever she did was purely personal. The dressmaking work which she did was between the hours of nine in the morning and five in the afternoon. The accident happened at 3:30 in the early morning. Under those circumstances the accident did not even arise in the course of the employment.

In view of the fact that neither the deputy commissioner of compensation nor the Judge of the Court of Common Pleas made any fact finding on this question we would desire to have this Court examine the testimony because there was also a dispute on the facts which were pertinent to this issue. Since Mrs. Winter had died while the suit was pending the respondent was at somewhat of a disadvantage. The respondent, however, produced testimony of a distant relative of Mrs. Winter who was in the household in February of 1932. He testified that he was around the house on February 29, 1932; that he saw Miss Jasnig there sewing and that she stopped at around five o'-

clock. He noticed further that when Miss Jasnig came to the household she had brought with her a satchel and her patterns and that on the afternoon of February 29th after Miss Jasnig had finished working the satchel was packed, closed and lying on top of the sewing machine (S. C., p. 83). He further testified that Miss Jasnig had told them at noon time that she was going to go home that night so that she could join some school to learn how to make patterns and do some shopping on the way home. He further testified that she was paid about five o'clock and that an early supper was had so that Miss Jasnig could go home in time. At supper time Miss Jasnig then asked Mrs. Winter if she would mind if she stayed overnight so that on her way home the next morning she could do some shopping and avoid the necessity of going into the City twice.

“Q. What did she say (Meaning Miss Jasnig).

The Witness: Miss Jasnig asked Mrs. Winter if she would mind if she stayed overnight because she wanted to do some shopping on her way home, she wouldn't have to come to the city again. I believe she lived outside—you know, it must have been the Bronx.

Q. What do you mean by the city, did she say? A. She wanted to buy something, probably in Gimbels, that is where she usually bought.

Q. Did she say where she was going to shop, in what city? A. Well, in New York.” (S. C., p. 85, ll. 25-40).

“Q. So when Miss Jasnig got this money it was for the pay of that day's work? A. Yes.

Q. Then during the course of the meal Miss Jasnig said, 'I think I will stay over,' or in effect, said that? A. Yes.

Q. 'Until tomorrow so I can do some

shopping before I go home?' A. Yes. (S. C., p. 88, ll. 15-23).

As before stated, Miss Jasnig lived at 2171 3rd Avenue, New York City. As a convenience to her it would be easier for her to have stayed overnight on the 29th at the completion of her work so that when she went home the next day she could stop at Gimbel's and do her shopping on the way home, thus completing her trip home and her shopping in one transaction. Her original plan, it seemed, was to go home the night of the 29th and if she did so, she would then have to come from her home down to Gimbel's and back the next morning. According to the testimony of the one fact witness produced by the respondent the latter plan was the plan formulated by Miss Jasnig at the noon meal and was subsequently changed while they were having an early supper.

Although Miss Jasnig in rebuttal denied such conversation, a clue to where the truth lies is to be found in Miss Jasnig's own testimony (S. C., p. 55) where she states on direct testimony:

“Q. Just tell us when you started and what you did. Did you start working? A. The day I started working about a quarter to nine.

Q. And when did you stop working? A. I stop working at five o'clock.

Q. Did you stop for lunch? A. Lunch, we stopped certainly for lunch.

Q. After you stopped at five o'clock what did you do after that? A. After that, when I was finished, and put together all my sewing things, why I go down for supper.”

That testimony is brief but certainly indicates that she finished her sewing at five o'clock and instead of leaving things as they were, collected her sewing things together and came down for sup-

per which must have been had shortly after five o'clock rather than at the usual six to six-thirty.

If the facts are determined to be by this Court that Miss Jasnig had finished all of her work on February 29th and was staying over as a convenience, or as a guest at the Winter household, then at 3:30 the next morning when this accident occurred, it occurred when she was in the status of a guest only, and there would be no argument on her behalf for benefits under the Workmen's Compensation Act of New Jersey.

It is of interest to note that even in the question of domestic servants on twenty-four hour call, and as part of their contract of employment receiving board and lodging, the appellate courts of this State and the decisions in other states have still adhered to the principles above referred to as laid down by Justice TRENCHARD and Justice HEHER.

Where a laundress is allowed to do her own washing on the premises of her employer in addition to board, lodging and money as compensation for her labor, and was injured while doing said washing, it was held that the accident did not arise out of and in the course of her employment. *Daley v. Bates & Roberts*, 224 N. Y. 126.

Where an employe left his immediate place of employment and went over to bid a fellow employe goodbye, and while leaning on a cog wheel cut his finger and was injured, it was held that the accident did not arise out of the employment. *DiSalvio v. Menihan Co.*, 225 N. Y. 123.

In Massachusetts an hotel employee went shopping after her day's work. As an employe she received board and lodging at the hotel. While returning, and on the way to her room in the hotel, she fell. Compensation was denied. *Dougherty v. Employer's Liab. Co.*, 1 Mass. WCC 450.

A waitress at an hotel, entitled to ride in her

employer's bus while on personal errands, was injured while riding therein on her way back to work at the hotel. It was held that the injury did not arise out of the employment. *Roth v. Adirondack Co.*, 138 N. Y. S. 717.

The Supreme Court of this state also applied those principles in the cases of

*Hanover v. Pembroke Golf Club*, 10 N. J. Misc. 378;

*VanDervandeer v. W. S. Me. Church*, 10 N. J. Misc. 793.

Your appellant desires to refer to this line of cases because he wishes to show that it is necessary to make an intelligent and critical analysis of the facts in each case. It certainly is not enough to be satisfied if there is an accident occurring any time within twenty-four hours and any place upon an employer's premises. Under the facts above cited even in the case of a domestic there must be some causal connection between the work done and the accident to impose liability upon an employer. The inquiry is to be directed not toward whether the accident occurred on the premises or within a twenty-four hour period. It seems to this appellant that the inquiry concerns itself with whether the accident arises by reason of a risk connected with what the appellee had to do in fulfilling her contract of service as a dressmaker; and also whether the accident occurs while the appellee is doing what a person employed as a dressmaker may reasonably do within a time during which she is employed and at a place where she may reasonably be during that particular time. Tested by the principles of law expressed by the Supreme Court and the Court of Errors and Appeals, and with such an analysis of the facts in the instant case, your appellant con-

tends that the fair conclusion to be drawn is that the defendant did not sustain an accident arising out of and in the course of any employment which she might have had with Mrs. Winter.

#### POINT IV.

**There was not sufficient competent, legal evidence upon which a judgment could be rendered in favor of the Appellee and against your Appellant since the testimony produced on behalf of the Appellee was evidence of transactions with a deceased person and therefore incompetent.**

There was considerable argument during the entire course of the trial on the question of legal responsibility of Mrs. Winter. By consent, depositions of Joseph Pfeiffer were taken as a witness on behalf of both the petitioner in compensation and the respondent in compensation. On behalf of the appellee his testimony was introduced to show that she was doing actual dressmaking for Mrs. Winter on February 29th, 1932. On behalf of the appellant his testimony was taken to show that at the conclusion of that particular day Miss Jasnig's bag was packed and she had finished her work, and that an early dinner was had in the household so that she could get to her home in New York City. His testimony was further adduced to show that this arrangement was changed and Miss Jasnig had requested permission to stay overnight as a matter of convenience.

The testimony of two other lay witnesses did not contribute anything toward establishing employment or any of the details concerning the employment. Mr. Brentano merely affirmed the fact

that Miss Jasnig did work for Mrs. Brentano about the time that she was working for Mrs. Winter and Miss Mayr gave practically no testimony.

The testimony concerning any contract of employment or any of the details surrounding the arrangements by which Miss Jasnig was to do any dressmaking for Mrs. Winter was that given by Miss Jasnig. Your appellant contends that this testimony is not competent or legal since it violates the provisions of section 4 of the Evidence Act, 2 C. S. p. 2218. The case is practically on all fours with that of *Horn v. Arnett*, 91 N. J. L. 110. In a well-reasoned opinion going into the entire question of such proceedings as held before the Workmen's Compensation Bureau, Justice KALISCH held that such a proceeding is not a mere inquest but is a judicial trial and is, therefore, a civil action.

This Court has also recently decided a much discussed question as to the latitude with which hearings in compensation may be conducted and as to the basis upon which a compensation judgment is to be founded. *Helminski v. Ford Motor Co.*, 111 N. J. L. 369.

“While the Workmen's Compensation Bureau is not bound by technical rules of evidence, it must ascertain the parties' substantial rights from evidence; and while hearsay testimony may be received by the Workmen's Compensation Bureau without necessarily resulting in reversal it cannot, as here, form the basis of an award of compensation.”

Your appellant contends that even though the Bureau might have allowed the testimony of transactions as between Miss Jasnig and Mrs. Winter to be given, contrary, so to speak, to the

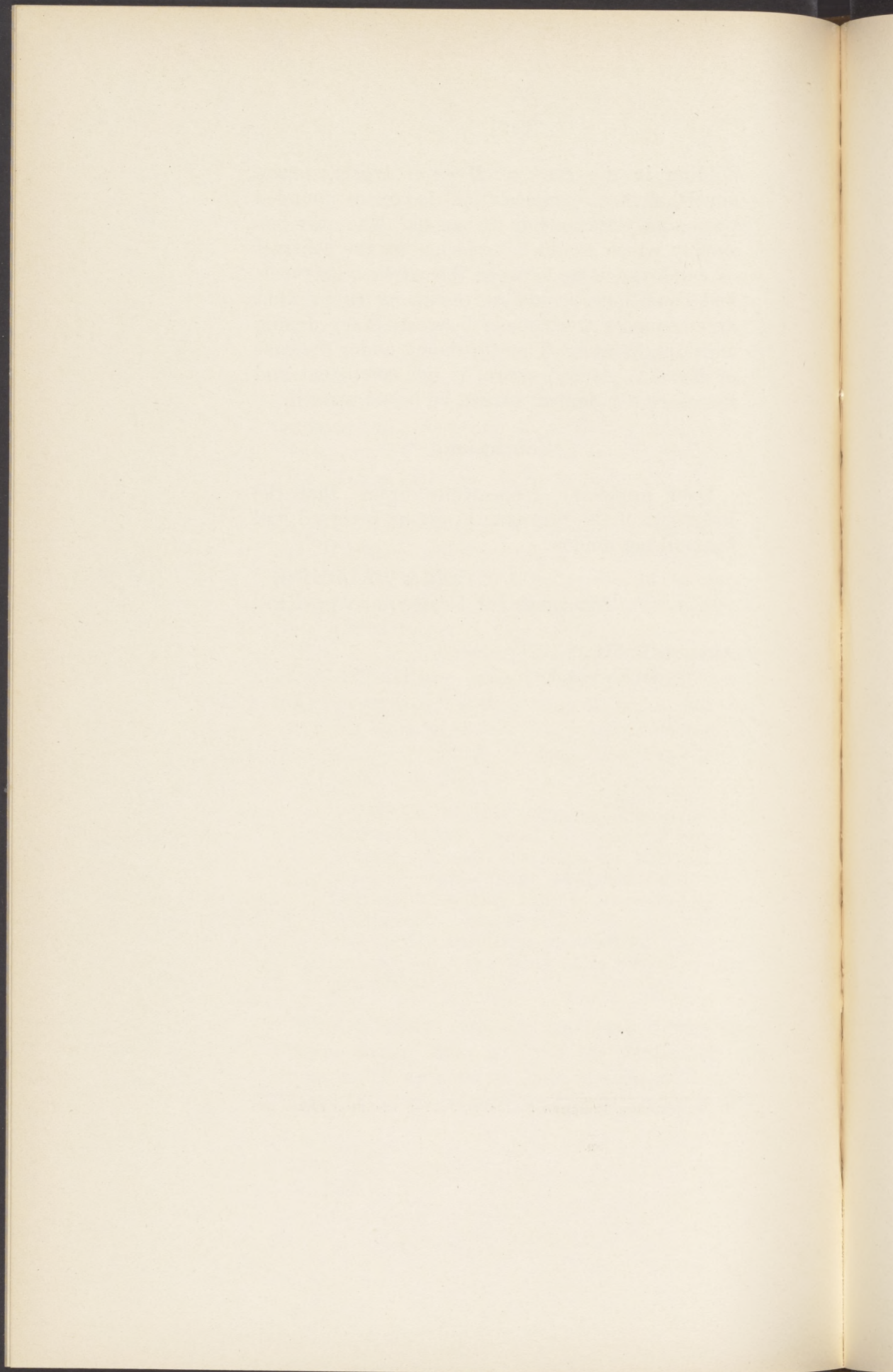
holding in the case of *Horn v. Arnett*, supra, nevertheless, a compensation judgment founded upon such testimony is erroneous. The only testimony which would be evidence on the contract of employment as between the parties, its terms and conditions, would be testimony as to what arrangements were made between Mary Jasnig and Mrs. Winter. This testimony under the case of *Horn v. Arnett*, supra, is not competent and therefore a judgment cannot be based upon it.

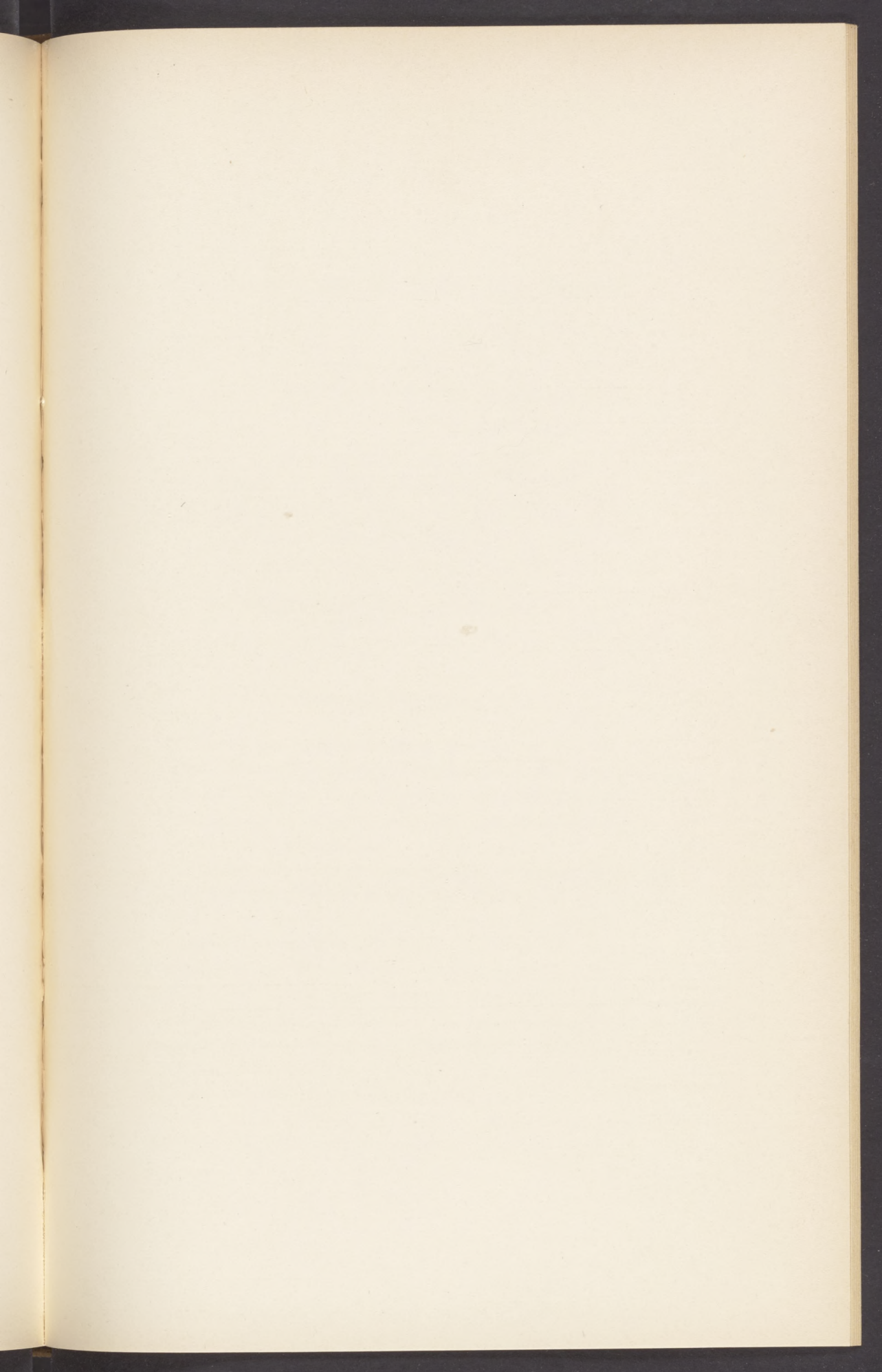
### Conclusion.

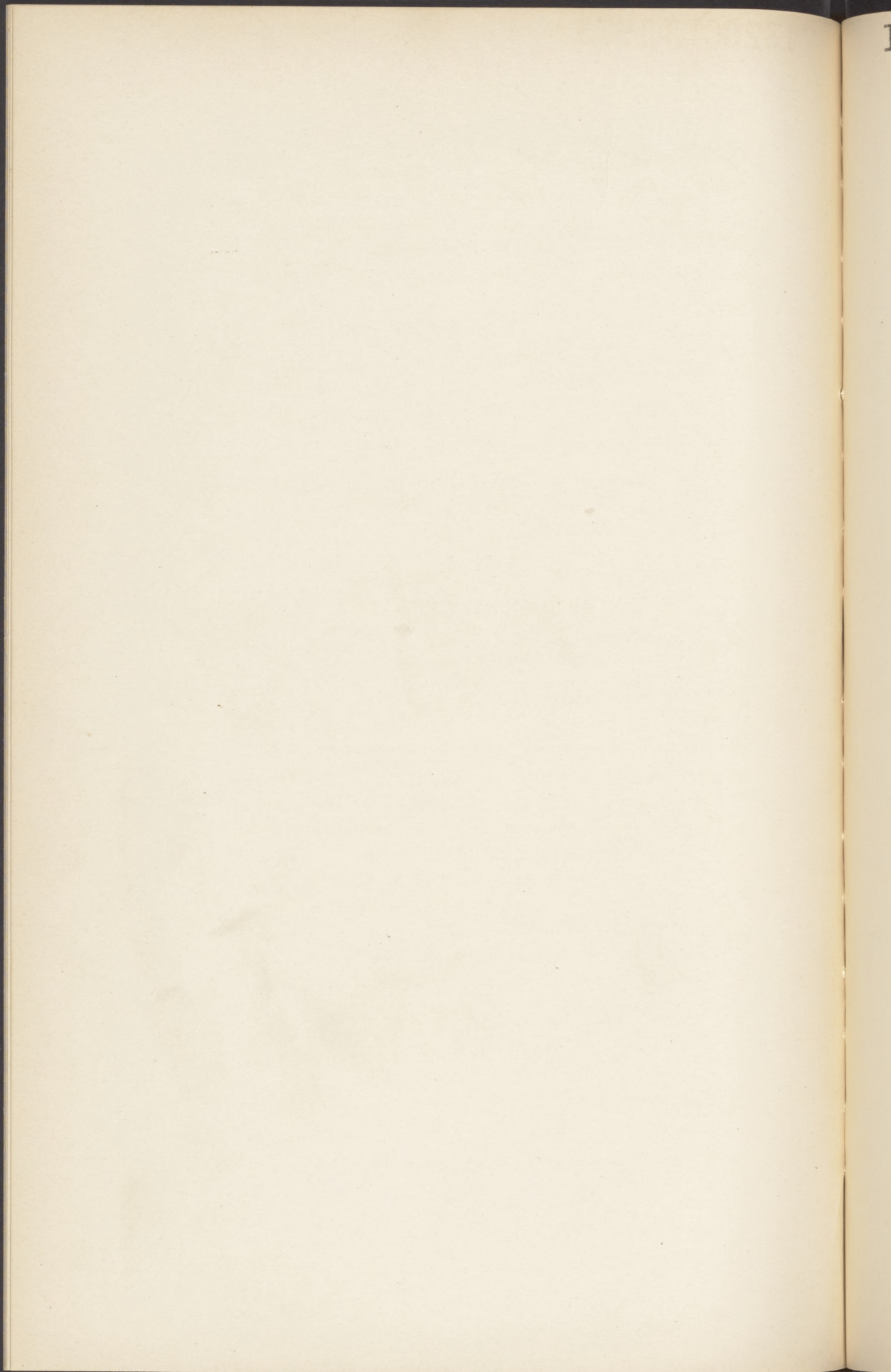
Your appellant respectfully urges that the judgment of the Supreme Court be reversed and for nothing holden.

COX & WALBURG,  
Attorneys for Prosecutor-Appellant.

ARTHUR F. MEAD,  
Of Counsel.







## New Jersey Court of Errors and Appeals

MARY JASNIG, <i>Respondent-Appellee,</i> vs. CHARLES A. WINTER, Executor of the Estate of Wolfgang Marie Winter, deceased, <i>Prosecutor-Appellant.</i>	On Certiorari. On Appeal from Supreme Court.	10
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**BRIEF OF THE APPELLEE.**

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**Statement of Facts.**

This is an appeal from a decision of the Supreme Court affirming a judgment of the Essex County Court of Common Pleas in a Workmen's Compensation appeal, allowing compensation to the respondent-appellee.

The appellee, Mary Jasnig, filed a formal petition for compensation against Wolfgang Marie Winter on November 2, 1932, in which appellee alleged that on March 1, 1932, at 3:30 A. M., while employed by Mrs. Winter at the latter's home, #90 Kent Place, East Orange, New Jersey, as a dressmaker, she fell down a stairway while going to the bathroom and sustained the injuries complained of. That as part of her employment appellee received board and lodging (S. C., pp. 4-5).

Mrs. Winter filed an answer stating that although appellee was employed, she was doing

some sewing work for a period of one day and stayed overnight at Mrs. Winter's home, with the permission of the latter (S. C., p. 10, fols. 10, 20). Mrs. Winter also denied that compensation was payable on the ground that appellee's employment was casual and her injuries were not the result of an accident arising out of and in the course of her employment with Mrs. Winter (S. C., p. 11, fol. 40; p. 12, fol. 10).

During the pendency of the proceeding Mrs. Winter died and her death was suggested on the record and the executor of her estate was substituted as the respondent (S. C., p. 15).

The appellee proved that she was employed as a dressmaker, at the rate of \$4 per day and that she generally worked for Mrs. Winter two or more days consecutively and that, as part of her employment and in order for her to do her work, she received board and lodging as additional compensation (S. C., p. 60, lines 14-40; p. 61, lines 17-25).

The appellee worked for Mrs. Winter as a dressmaker on the 18th, 19th and 20th of February, 1932, and, at the completion of that work, arrangements were made for her to return to work for Mrs. Winter on February 29, 1932 (S. C., pp. 66, 67, 68, 69). During the latter period she was to work for Mrs. Winter for three days. The appellee came to Mrs. Winter's home on February 29, 1932 and worked all of that day and she was to continue to work the next day (S. C., p. 54, fols. 10-20; S. C., p. 55, fols. 20-30). The appellee stated that the reason she stayed overnight was to continue work the next day, and not as related by the witness, Pfeiffer, that appellee stayed overnight so that she could do some shopping on her way to New York on the

following morning (S. C., p. 90, lines 22-24; p. 92, lines 10-20; p. 93, lines 14-20).

The appellee retired in the evening and about 3:30 in the morning it was necessary for her to go to the bathroom. She left her room and groped along the wall for the doorway of the bathroom, as there were no lights in the hall. She found an open space which she mistook for the entrance of the bathroom. In reality it was the stairway leading to the floor below. The appellee stepped into space and fell down the stairs, receiving very serious injuries (S. C., pp. 56, 57). 10

The Deputy Commissioner found that there was an employment; that the employment was not casual; and that the injuries arose out of and in the course of the employment and accordingly entered a judgment to that effect (S. C., pp. 110-114). 20

An appeal was taken to the Essex County Court of Common Pleas. For the first time the question was raised that the appellee was an independant contractor. Judge Brennan, of the Essex County Court of Common Pleas, in an opinion, sustained the findings of the Workmen's Compensation Bureau and, in addition, held that the appellee was not an independent contractor (S. C., pp. 117-119). 30

The findings of fact and determination of the Court of Common Pleas are set forth in S. C., pages 120-125.

A certiorari was allowed by the Supreme Court, but, after argument, the judgment of the Court of Common Pleas was affirmed in an opinion by Mr. Justice Parker (S. C., pp. 129-131).

The appellant urges the same points in this appeal as it did in the Supreme Court, namely: 40

I. The appellee was an independent contractor.

II. The appellee, if there was any status of employment, was a casual employee.

10 III. The accident did not arise out of and in the course of the employment.

IV. There was not sufficient competent legal evidence adduced at the hearing in favor of the appellee and against the appellant, since the evidence produced on behalf of the appellee violated Section 4 of the Evidence Act.

20 Appellee contends that there is no merit to any of the points raised by the appellant.

## ARGUMENT.

### POINT I.

30 Appellee was an employee and entitled to the benefits of the Workmen's Compensation Act, and was not an independent contractor as contended by the appellant.

The appellant contends that the appellee was an independent contractor and therefore not entitled to the benefits of the Workmen's Compensation Act. This contention comes at rather a late date. The answer filed by the appellant's testatrix admits the employment and also admits that the relation of employer and employee existed between the parties (S. C., pp. 9-12).

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It appears from the testimony of Pfeiffer that before the appellee began work she went with the decedent to select some dress material (S. C., p. 83, lines 21-25). That is conclusive evidence that the appellee was not engaged to accomplish a result. She was engaged to do all kinds of sewing for the decedent, select materials for her, or assist in the selection of such materials, alter dresses and generally to do what the decedent ordered her to do and in the manner in which the decedent desired it to be done (S. C., p. 50, lines 21-30). 10

There is no question but what the appellee was an employee within the meaning of the Workmen's Compensation Act, even though there were no admissions in appellant's answer or they were ignored. 20

In *Otmer v. Perry*, 94 N. J. L. 73, the following citation from 39 *C. J.* 35, defining the relationship of master and servant was cited with approval by this Court:

“The relation of master and servant exists whenever the employer retains the right to direct the manner in which the business shall be done, as well as the result to be accomplished, or, in other words, not only what shall be done, but how it shall be done. Inasmuch as the right to control involves the power to discharge, the existence of the power to discharge is essential, and is an indicium of the relationship.” 30

Applying this test to the relationship between the parties in the case at bar, there is no doubt but what the relationship of master and servant existed, and not that of independent contractor. 40

The appellant makes much of the fact that there was no control of the means by which the result was to be accomplished, but control existed only as to the result of the work. This is not so. The minute the appellee entered the home of the appellant's decedent she was subject to the latter's control and instructions as to the manner and method of performing her duties. The appellee went with the decedent to purchase materials and patterns and assisted her in the selection of such materials. The mere fact that the appellee only performed one kind of work, that of a seamstress, did not place her in that business. From the manner and method in which she conducted her work, whenever she was engaged to do so, she did it on the basis of employee and not on the basis of an independent contractor.

The cases cited by the appellant are cases where the person engaged was to do one specific thing in their line of business. There was no supervision or control on the part of the employer. The work could have been done at any time, at the option of the one engaged. In the case at bar the appellee was engaged for one specific period, to do just what she was directed to do by the decedent, and that included, not only the sewing, but the purchasing of materials and patterns, all of which work was done at the bidding and convenience of the employer.

Mr. Justice Parker, speaking for the Court below, said (S. C., p. 130, lines 10-20):

“The first point made is that the petitioner was an independent contractor. We do not think so. *She was working by the day, in the presence of her employer much of the time and under the supervision and direction*

*of the latter all the time. The employer furnished the materials. \* \* \** We think she was within the protection of the act as an employee.” (Italics mine.)

## POINT II.

### The appellee’s employment was not casual. 10

Section 23 (23c) of the Workmen’s Compensation Act defines casual employment in the following manner:

“\* \* \* if in connection with the employer’s business, as employment the occasion for which arises by chance or is purely accidental; or if not in connection with any business of the employer, as employment not regular, periodic or recurring.” 20

The appellee’s employment was not casual under either of the two tests enumerated in the statute. If one should say that the making of dresses for a housewife is part of said housewife’s business as much as it is to engage domestic help, the occasion for the employment did not arise by chance or was not purely accidental. The employment was premeditated and the engagement for the employment was made some time prior. However, if the test to be applied was whether the employment was regular, periodic or recurring, a line of decisions beginning with *Sabella v. Brozziola*, 86 N. J. L. 505 and ending with *Mullen v. Walker*, 105 N. J. L. 199, clearly shows that this employment was not casual. In the *Mullen* case the petitioner was engaged to un- 30 40

load a car of flour for one day. He was told to come back the following week to unload a second car. The injuries were received while the petitioner was unloading the second car. The Court held that this employment was regular employment and not a casual one. This case is on all fours with the case at bar. The petitioner worked for three days the previous week and was told to come back to work the following week and it was during the latter period that the injuries were received.

The cases of *Stillman v. Judges of Court of Common Pleas*, 139 Atl. 705 and *Harrington v. Garrison*, 168 Atl. 166, are both cases of domestics who were not engaged for full time, but during periodic periods and for part time, and who received injuries while so engaged.

In the former case the petitioner was engaged for a period of two weeks and for such further time as she should be required to take care of the household of the employer while his wife was in a hospital. The petitioner was accustomed to this sort of service, sometimes engaging for domestic help generally and sometimes as a seamstress. The Court held that she was a regular servant and entitled to compensation.

In the latter case the petitioner was a household worker and she was engaged by several families, including that of the defendant, and she had been engaged for over a period of ten years with the understanding that she was to have three days' service each week, the particular days of the week not being specified. The defendant admitted that the petitioner worked at least one day a week and came on call. The Court there held that the employment was recurrent and therefore not casual.

The case of *Forrester v. Eckerson*, 107 N. J. L. 156, cited by the appellant, is not in point. The employee in that case had regular employment with the Butterine Company and at various times he would work for the officers of the company at their respective homes. The quotation of the appellant from this case as to the meaning of "regular, periodic or recurring employment" clearly demonstrates that the employment of the appellee herein is not casual. The law is that the employment must be regular, periodic *or* recurring, not regular, periodic *and* recurring. 10

The appellant contends that the appellee returned unexpectedly on February 29, 1932. The evidence does not so prove. She came by previous engagement and, further than that, the lower tribunals have found so as a fact. Since this is a fact question and resolved in favor of the appellee by three tribunals, this Court will not overrule this conclusion if there is ample evidence to sustain it (*Berlinger v. Medal Silk Co.*, 113 N. J. L. 476). 20

### POINT III.

**The accident arose out of and in the course of the employment.** 30

The appellee was employed as a dressmaker, performing her work from about nine o'clock in the morning to about five o'clock in the afternoon. Because of the fact that she resided at a great distance from the place of employment it was customary to stay at the home of the appellant's decedent, who furnished her both board and lodging for the period it was necessary for appellee 40

to remain with her. The salary the appellee was paid made due allowance for board and lodging (S. C., p. 60, lines 13-40; p. 61, lines 22-40).

10 Had the accident occurred in the same manner it did between the hours of nine in the morning and five in the afternoon, there would have been no question as to the liability of the appellant, since an accident which occurs while an employee is going to perform an act essential to his personal comfort and convenience, such as going to the toilet, preparing to leave work, or to satisfy his thirst, is considered to have arisen out of and in the course of his employment. *Zabriskie v. Erie R. R. Co.*, 86 N. J. L. 266; *Phil. Hollenbach Co. v. Hollenbach*, 204 S. W. 159.

20 The appellant contends that since the accident occurred after the appellee ceased her work as a dressmaker the accident did not occur during the course of her employment. The Courts of New Jersey and other jurisdictions have not placed such a narrow construction upon the phrase "an accident arising out of and in the course of his employment". The first case in New Jersey construing this phrase was *Bryant v. Fissell*, 84 N. J. L. 72, and Mr. Justice Trenchard, speaking for the Court, said:

30 "An accident is an unlooked for mishap or untoward event which is not expected or designed. Whether an accident is expected or designed is to be judged from the victim's point of view. An accident arises out of the employment when it is something, the risk of which might have been contemplated by a reasonable person when entering the employment as incidental thereto. A risk is inci-

40 dental to an employment when it belongs to

or is connected with what a workman has to do in fulfilling his contract of service; it may be an ordinary risk directly connected with the employment or an extraordinary risk which is only indirectly connected with the employment owing to the special nature of the employment. An accident arises in the course of the employment if the employee is doing what a man may reasonably do within a time during which he is employed or at a place where he may reasonably be during that time.” 10

In the recent case of *Hall v. Doremus*, 114 N. J. L. 289, Mr. Justice Heher, speaking for the Supreme Court, cited with approval the language of Mr. Justice Trenchard in *Bryant v. Fissel*, supra, and went into further detail: 20

“The words ‘out of’ refer to the origin and cause of the accident; the words ‘in the course of’ to the time, place and circumstances under which the accident takes place. The former words are descriptive of the character or quality of the accident; the latter relate to the circumstances under which an accident of that character or quality occurs. 30  
The words ‘out of’ connote an accident that is in *some sense due to the employment* (italics mine). \* \* \*

“There must be a causal connection between the accident and the employment, or the former cannot be said to have arisen out of the latter. If the danger were one to which the employee was exposed because of the nature of his employment, the accident arose out of the employment. An accident arises 40

10 'out of' the employment when there is a causal connection between the conditions under which the work is required to be done and the resulting injury. Unless the employment is a contributing proximate cause of an injury sustained in the course of the employment is not compensable. It must be traceable to a hazard of the employment.

20 "It need not have been foreseen or expected, but after the event it must appear to 'have had its original in a risk connected with the employment and to have flowed from that source as a rational consequence'. In re *McNicol*, 215 Mass. 497, 102 N. E. 697, L. R. A. 1916 A. 306. The injury must, *ex necessitate*, be the 'result of the employment, and flow from it as the inducing proximate cause. In re *Madden*, 222 Mass. 487, 111 N. E. 379, L. R. A. 1916 D. 1000'."

It cannot be denied that the appellee, because of the nature of her employment, was expected to remain at the home of the appellant's decedent and one would reasonably expect any time during the day or night it might become necessary for her to go to the bathroom.

30 It has been held in the cases of *Rucker v. Read* (Essex Com. Pl.), 39 N. J. L. J. 48 and *Allen v. Glasser*, 4 Misc. 754, that employees who were caught in a fire while asleep on the premises of their employer were said to have met their deaths in the course of their employment. The former case was that of a domestic servant and the latter that of a waitress in a summer hotel who, because of her employment, lived in the hotel.

40 The waitress was not subject to twenty-four hour call, but was free to go and come after the hour

of serving meals had passed. The Court held that her death by fire was one of the risks incidental to her employment and she was deemed to have met her death during the course of her employment.

The case of *Matter of Giliotti v. Hoffman Catering Co.*, 246 N. Y. 279, is another case in which the employee died by fire while asleep on the premises of the employer. Giliotti was employed as a chef at a weekly salary, including board and lodging. His status was that of a domestic servant in whose case it was an implied part of the contract of employment that the employee sleep on the premises. He slept in a part of the hotel reserved for the help, in a room solely his. A fire occurred early on a Monday morning. Monday was his day off and when he ceased work on Sunday night he was free to do as he pleased. He could have left the hotel on Sunday night, which he did often, or he could have remained until Monday morning. Much stress was laid on the fact that the condition of his clothing and of the bed indicated that he was dressing himself preparatory to his leaving the premises when the fire occurred. The Court said:

“The relation of employer and employee did not cease because the employee was off duty. There was a continuity of employment. Sleeping on the premises in a room provided by the employer in the servants’ quarters was an incident of employment mutually beneficial to the employer and employee, not a temporary suspension of it. The parties contemplated that Giliotti when engaged in work should occupy his room because he was an employee. He was reasonably exercising a

right which his contract of service authorized him to exercise. He did not become a boarder when he ceased to be a cook. Lord Dunedin, in *Davidson Co. v. McRobb* (1918), A. C. 304, 321, said: 'It (in the course of employment) connotes to my mind, the idea that the workman or servant is doing something which is part of his service to his employer or master. No doubt it need not be actual work, but it must, I think, be work or the natural incidents connected with the class of work—e. g., in the workman's case the taking of meals during the hours of labor; in the servant's not only the taking of meals, but resting and sleeping which follow from the fact that domestic servants generally live and sleep under the master's roof.'

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The case of *Holt Lumber Co. v. Industrial Com.*, 168 Wis. 381, was one in which the employee was a sawyer, employed in the woods. His contract of hire included board and lodging. He was compelled to live in a small camp in the midst of the woods, inasmuch as the main camp was eight miles away from the place of his employment and it was difficult for him to come and go. He was injured while asleep, by a straw which lodged in his throat. The Court there said:

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“The general rule under the authorities is that, when the contract of employment contemplates that the employee shall sleep upon the premises of the employer, the employee, under such circumstances, is considered to be performing services growing out of and incidental to such employment during the time he is on the premises of the employer.”

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The appellant lays much stress on the fact that the appellee was not on twenty-four hour call and contends that any accident she might have had after she stopped work at five o'clock is not compensable. Applying the principles enunciated in the foregoing decisions it follows that there is "a causal connection between the conditions under which the work is required to be performed and the resulting injury" and that she was compelled by her employment to reside on the premises of the respondent and if she were not present on such premises at the particular time of the accident, the accident would not have occurred. Her employment brought her to prosecutor's home and subjected her to the risks and dangers there present. It was said in *re McNichols*, 215 Mass. 497:

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"The causative danger must be peculiar to the work and not common to the neighborhood."

This same theory was applied in the case of *Terlecki v. Strauss*, 85 N. J. L. 454. In that case the employee was combing her hair in front of a mirror set upon the wall of the factory, preparatory to her leaving for home. Her hair caught in machinery nearby, and she was injured. The Court held that the injury arose out of and in the course of her employment, and it stated:

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"The employment was not, indeed, the proximate cause of the accident, but it was a cause in the sense that but for the employment the accident would not have happened. The employment was one of the necessary antecedents of the accident."

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It now appears to be well settled law that where the employment is in any way a contributing cause to the injury, the injury is said to arise out of or in the course of the employment (*Hall v. Doremus*, supra).

10 A similar case was recently decided by the New York Court of Appeals in the matter of *Connelly v. Samaritan Hospital*, 259 N. Y. 137. In that case the claimant, while working in a laundry, fell as a result of a cardiac condition and, in falling, struck a table which was part of the laundry equipment and sustained serious injuries. The Court held that the table had a potential danger to only those employed in that factory and placed the employee into a zone of special danger.

20 The same reasoning was applied by the Court in the *Connelly* case as was applied by the Supreme Court in *Hall v. Doremus*, supra. The causal connection between the employment and the place of employment and the condition surrounding it were contributing factors to the injury. The Court, in the *Connelly* case, stated:

30 “Where conditions of the employment, including the location of the place of work, constitute a factor which in combination with other conditions produces accidental injury, the risk of such an injury is incident to the employment. That is true, though risk of similar injury is no greater in that employment than otherwise.”

The Court went on to say further:

40 “In most cases, accidental injuries received ‘in the course’ of an employment arise from risks related to the employment. Not always. A purely fortuitous coincidence of

time and place is not enough. There must be causal connection. An accidental injury is, from its nature, the unintended result of a combination of circumstances. Chance may dictate the coincidence in time or space of conditions which in combination produce catastrophe, but of course the result of the particular combination of conditions is dictated by the laws of nature, not of chance. Where conditions of the employment, including the location of the place of work, constitute a factor which in combination with other conditions produces accidental injury, the risk of such an injury is incident to the employment. That is true, though the risk of similar injury is no greater in that employment than otherwise. Thus a fall may be due to a misstep in the course of employment. All men are subject during their waking hours to the risk of a fall through a misstep or other mischance, alike at home or at work. A clerk in a counting house is no more subject to such a mischance than the public in general. None the less when a clerk sustains injuries from a fall through mischance, while working in a counting house, the employment is one of the factors which produces the fortuitous combination of circumstances which result in the accidental injuries (*Matter of Pasternack v. Federation of Jewish Charities*, 240 N. Y. 621).”

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The Court further stated:

“If except for the employment, the fall, though due to a cause not related to the employment, would not have carried the consequences it did, then causal connection is es-

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10            established between injury and employment,  
               and the accidental injury arose out of the  
               employment. The employment has subjected  
               the workman to a special danger which in  
               fact resulted in injury. \* \* \* All hazards aris-  
               ing from conditions attached to the place of  
               work must be a source of special danger to  
               the employees, for only those who resort to  
               that place are subject to those hazards. \* \* \*  
               The claimant was subject at all times and  
               places to injury by a fall which might result  
               in concussion upon a hard surface. The haz-  
               ard that in a fall she might incur injury by  
               striking against the table near which she was  
               working at the time of the fall attached to  
               the place of employment. To that potential  
 20            danger only those in that place were subject,  
               and thus her employment called her into a  
               zone of special danger.”

              The only time the appellant was liable to in-  
               jury on the premises of the decedent, or liable to  
               fall down the particular stairway she did, was  
               when her employment called her to that place.

              The Court further said on page 143:

30            “The case of Matter of Giliotti v. Hoffman  
               Catering Co. (246 N. Y. 279, 283), foreclosed  
               all questions of whether an accident arises  
               out of the employment when those injuries  
               are the result of conditions attached to the  
               place of work, *even though the primary cause*  
               *of the injury may not be related to the em-*  
               *ployment* and the conditions of the place of  
               work not usually dangerous.” (Italics mine.)

40            The appellee, by reason of her employment,  
               was compelled to reside at the home of the de-

cedent. She had no choice in the matter. The house was in the full control and supervision of the decedent. While there appellee was performing services incidental to her employment and beneficial to her employer. It was contemplated, as part of the employment, that she was to reside on the premises of the decedent. That subjected the appellee to all of the hazards of the home of the decedent. "To that potential danger" only she was subject and "thus her employment called her into a zone of special danger".

True, at the time of the accident, the appellee was going to the bathroom for her personal convenience. But the accident was not such that could have happened to her in any place. If she were in her own home, she would not have received such injuries while going to the bathroom, because that particular hazard (the open stairway) would not have existed in her home. It existed in only one place—the home of the decedent.

In the light of the more liberal construction placed by the Court in cases of this class it cannot be denied that this injury arose out of and in the course of the employment.

The appellant tried to show by the testimony of Joseph Pfeiffer (S. C., p. 85, lines 25-40; p. 88, lines 15-23) that the status of the appellee at the time of the accident was that of a guest and not of an employee; that she asked the decedent's permission to remain overnight so that she could purchase some material the next morning in New York, on her way to her home. This, of course, was denied by the appellee (S. C., pp. 90-93). That question of fact was resolved by the Workmen's Compensation Bureau and the Essex

County Court of Common Pleas in favor of the appellee and the finding of these tribunals was that appellee's status at the time of the accident was that of employee. This conclusion based on competent evidence will not be disturbed by this Court (*Berlinger v. Medal Silk Co.*, supra). The Supreme Court has also affirmed this finding.

10 The appellant cited several cases in which it was held that injuries received by employees were not received in the course of their employment.

In *Daley v. Bates & Roberts*, 224 N. Y. 126, the employee was injured while she was doing her own washing. In *Di Salvio v. Menihan Co.*, 225 N. Y. 123, the injured employee was bidding good bye to a fellow-employee and was injured while leaning on a cog wheel. In *Douherty v. Employers' Liab. Co.*, 1 Mass. W. C. C. 450, the employee was injured while returning from a personal shopping tour. In *Roth v. Adirondack Co.*, 183 N. Y. S. 717, a waitress of a hotel, riding in employer's bus on a personal errand, was injured. The Court held that she had the same status as any other passenger, in view of the fact that she had to pay her fare thereon. In *Hanover v. Pembroke Golf Club*, 10 N. J. Misc. 378, an employee of a golf club, while climbing a hay-loft, was injured.

30 It appeared from the testimony that he did this for his own purpose and it was not part of his employment to be in that locality. In *Van Der-vandeer v. W. S. Me. Church*, 10 N. J. Misc. 793, a minister was injured in cleaning out ashes from a boiler in a parsonage. His duties as minister did not include this work and therefore the Court held that the injury did not arise out of and in the course of the employment.

40 All of the cases cited by the appellant are distinguishable from the case at bar. The principles

to be applied to this case are those set forth in *Hall v. Doremus*, supra. In the cases cited by appellant there is no causal connection between the injuries received and the employment.

In each of those cases the employee was performing some act personal to himself and was injured in the performance of such act. The place of employment or the hazards and conditions of such employment did not contribute to the injury. In the case at bar the condition of the upper floor of decedent's house and the hazards that there existed were the causes of the injuries. The appellee could just as well have received the same injuries if she were preparing to go down stairs in the morning for breakfast, to resume her work, or at any time during the day when her work necessitated her descending this particular staircase.

#### POINT IV.

No evidence was admitted which would violate Section 4 of the Evidence Act; and, if any such evidence was so admitted, such evidence is competent under Section 9 of the Laws of 1918, Chapter 149.

The appellant contends that the Deputy Commissioner founded the judgment upon improper and illegal testimony, in violation of Section 4 of the Evidence Act, 2 C. S., page 2218.

The appellant objected to this type of testimony throughout the examination of not only the appellee, but all disinterested witnesses and in each instance the Deputy Commissioner sustained the objection. The judgment was founded, not

on this evidence, but on the other competent evidence adduced at the hearing and upon the admissions of the decedent in her answer. There is no dispute that the appellee was employed by the decedent, that she was employed as a dress-maker, that at the time of the accident she was in the home of the decedent—the place where she rendered the services and that the accident actually occurred.

For this ground the appellant relies on the case of *Horn v. Arnett*, 91 N. J. L. 110. It must be noted that this case was decided in 1916 and in 1918 the Legislature passed an act amending the Workmen's Compensation Law (P. L. 1918, p. 429), particularly Section 9, which reads as follows:

“9. At such hearing evidence, exclusive of ex parte affidavits, may be produced by both parties, but the official conducting such hearing shall not be bound by the rules of evidence.”

This section came up for construction in the case of *Scalise v. Uvalde Asphalt Pav. Co.*, 98 N. J. L. 696. The Court for its authority cited a case decided by the New York Court of Appeals—*Knickerbocker Ice Co. v. Carroll*, 218 N. Y. 435. Our Court stated that Section 9 was apparently taken from the New York Statute and the same construction should be applied to Section 9 as was given by the New York Courts to its similar section. Our Court stated that the rules of evidence were practically swept away in workmen's compensation cases, but our Court goes on to say:

“But as to the probative force of testimony condemned by the generally accepted rules of evidence to be incompetent or improper or valueless, an entirely different legal situation is presented.”

In other words, the law seems to be that all kinds of evidence is admissible in compensation cases, but the probative value to be given to such evidence is the question that the Commissioner must consider. He cannot found his decision solely on improper evidence. 10

In the *Knickerbocker* case the New York Court of Appeals stated as follows:

“This section has plainly changed the rules of evidence in all cases affected by the act. It gives the Workmen’s Compensation Commission free reign in making its investigation and in conducting its hearings and authorizes it to receive and consider not only hearsay evidence, but any kind of evidence that may throw light on a claim pending before it. The award of the Commission cannot be overturned on account of any alleged error in receiving evidence. \* \* \* 20

“That section does not declare the probative force of any evidence, but it does declare that the aim and end of the investigation by the Commission shall be ‘to ascertain the substantial rights of the parties’. No matter what latitude the Commission may give to its inquiry, it must result in a determination of the substantial rights of the parties. Otherwise the statute becomes grossly unjust and a means of oppression.” 30 40

It must be noted that in all cases either in New York or New Jersey, in which this section has been construed adversely to the petitioner, the only evidence presented to the Commission was the mere statement of the employee, generally deceased, and testimony on the part of the respondent negating the effect of the same. In the

10 Knickerbocker Ice case the deceased employee complained to his wife that he had been injured while unloading ice. The employer showed by the testimony of co-employees, who were present on the day the deceased claimed to have received these injuries, that said employee was not injured at all. The Court held that no award could be founded on this testimony, especially when it was so effectively controverted by the testimony. The

20 New Jersey Courts decided in the same manner in the case of *Helminsky v. Ford Motor Co.*, 111 N. J. L. 369. In that case the deceased employee, who was employed by the Ford Motor Co., claimed to have had an accident on April 26, 1929 and he died on November 3, 1929. The only facts which were adduced in favor of the petitioner was the testimony of the widow, that when he returned from work on the night of April 26, 1929, his right testicle was swollen and he was running a temperature. A physician was called,

30 who found the condition above mentioned. The decedent continued to work from time to time and meanwhile it was ascertained that he had tuberculosis of the chest. He was sent to a hospital and, at the time of his death on November 3, 1929, an autopsy disclosed that he had died of tuberculosis of the testicle. The decedent told the doctor that "he fell against the wheel in the

40 Ford plant while he was working there".

The Court stated that while the Workmen's Compensation Bureau was not bound by the tech-

nical rules of evidence, it must ascertain the substantial rights of the parties from competent testimony; and while hearsay testimony may be received without necessarily resulting in reversal it (incompetent testimony) cannot form the basis of an award of compensation, citing *Friese v. Nagle Packing Co.*, 110 N. J. L. 588. The Court went on to say: 10

“In the present case the Supreme Court found as a fact, ‘even assuming the admissibility of the doctor’s testimony,’ which it regarded ‘as illegal in so far as it indicated an accident occurring in the course of the employment of the deceased, and considering the testimony of fellow workmen to the effect that no accident occurred, combined with the fact that the death was due to tuberculosis’, that ‘the award was clearly against the weight of the evidence’.” 20

The *Helminsky* case is on all fours with the Knickerbocker case in New York. The statement of the decedent as to the fact of an accident was received by the Court, which fact was negative by direct testimony of co-employees. The award was made on hearsay evidence alone and it surely could not stand. In the case at bar we have the admissions of the appellant, the testimony of Pfeiffer, a relative of the appellant, and the natural presumptions arising from the relationship. In fact, the Commissioner was careful to exclude as much of this testimony as possible. 30

The very recent case of *Ayers v. Public Service Co-Ordinate Transport Co.*, 12 Misc. 777, upholds this contention. The Supreme Court cited with approval the following language of the Court of Common Pleas: 40

10           “Petitioner’s and doctor’s hearsay testimony as to the fall will not be considered in this respect. But the fact that same was inadmissible—*Helminsky v. Ford Motors*, 111 N. J. L. 369—and the fact that they may have improperly formed a part of the basis of an award by the Bureau, will not result in a reversal here, when the burden of proof is otherwise properly sustained, since this Court is to ‘decide the merits of the controversy’.

          (P. L. 1932, c. 25, Sec. 19) *Helminsky v. Ford Motors*, supra.”

20           There was no error committed by the Deputy Commissioner in view of the foregoing, even if a slight bit of such evidence crept into the testimony, as the award is based on competent testimony and natural presumptions and there is sufficient evidence in the whole record to sustain the findings of the Deputy Commissioner (*Berlinger v. Medal Silk Co.*, supra; *Ayers v. Public Service Co-Ord. Trans. Co.*, supra).

          The Court below said on that point (S. C., p. 131, lines 10-20):

30           “‘The fourth and last point is that the finding rests on illegal evidence, in that to some extent that evidence related to transactions with a deceased party. Suffice it to say that most, if not all, of such evidence was excluded by the commissioner, and that there still remained sufficient legal evidence to sustain his findings. It may be well to add that we are not referred by the brief to any specific piece of testimony which is challenged as injuriously erroneous.”

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**CONCLUSION.**

Appellee, therefore, prays that the judgment of the Supreme Court be affirmed with costs.

Respectfully,

FRANK PASCARELLA, 10  
Attorney for  
and of Counsel with Appellee.

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