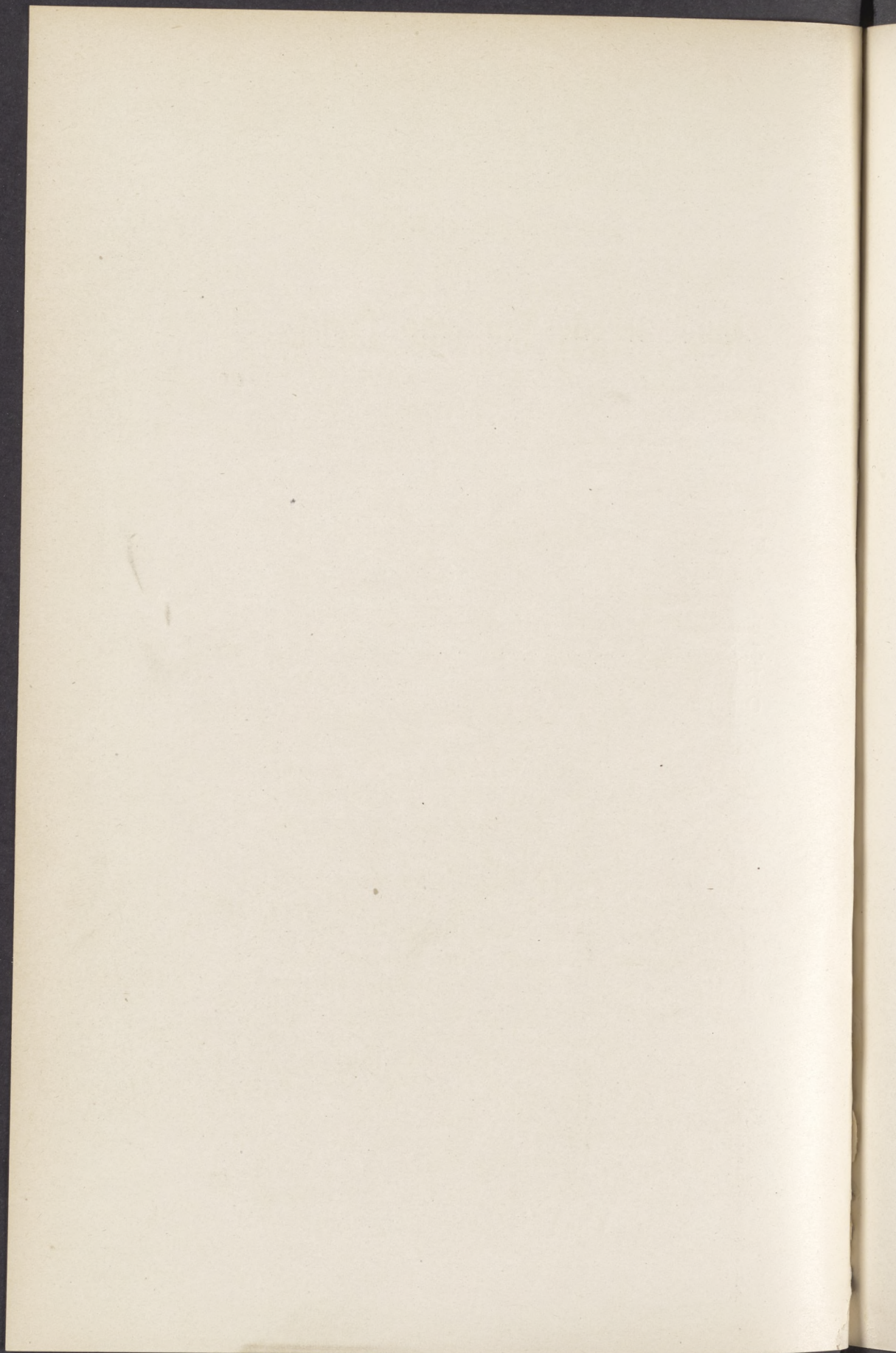


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Notice and Grounds of Appeal.

Notice and Grounds of Appeal.

Filed. 33001A

New Jersey Supreme Court.

ANNA KING, on behalf of her- self and MARGARETE KING, <i>Appellant—Petitioner,</i> <i>vs.</i> SPLITDORF ELECTRIC COMPANY, a corporation, <i>Appellee—Respondent.</i>	}	10 <i>On Appeal.</i> <i>Notice of Appeal.</i>
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To Kalisch & Kalisch, Esquires, Attorneys of Appellee-Respondent. 20

Take notice that the appellant-petitioner, Anna King, in behalf of herself and Margaret King, appeals to the Court of Errors and Appeals from the judgment of the New Jersey Supreme Court, entered in this cause, on the following grounds:

1. Because said New Jersey Supreme Court erred in holding that Margaret King, the illegitimate infant daughter of the petitioner, and granddaughter of John F. King, deceased, father of the petitioner, was not a dependent of the said John F. King within the meaning of the Workmen's Compensation Act. 30

2. Because said New Jersey Supreme Court erred in reversing the judgment of the Essex County Court of Common Pleas.

Respectfully,

WILLIAM P. MURPHY, 40
Attorney of Appellant.

Writ of Certiorari.

Writ of Certiorari.

Allowed May 5, 1917.

NEW JERSEY, ss.

10 THE STATE OF NEW JERSEY to
HON. HARRY V. OSBORNE, Judge of
the Common Pleas Court of Essex
[L. s.] County, and JOSEPH McDONOUGH,
Clerk of the Common Pleas Court
of the County of Essex, and ANNA
KING, on behalf of herself and of
MARGARETE KING, GREETING:

20 We being willing for certain reasons to be cer-
tified of and concerning certain conclusions or
determination of facts and order rendered on
the 16th day of April, 1917, by the Honorable
Harry V. Osborne, Judge of the said Court of
Common Pleas in and for the said County of
Essex, in certain proceedings brought on behalf
of Anna King and Margarete King, petitioner,
against the Splitdorf Electrical Company, re-
spondent, for the determination and recovery of
compensation under an Act of the Legislature
of the State of New Jersey, entitled, "An Act
prescribing the liability of an employer to make
30 compensation for injuries received by an em-
ployee in the course of employment, establishing
an elective schedule of compensation and regu-
lating procedure for the determination of liabil-
ity and compensation thereunder," approved
April fourth, 1911, and the acts amendatory
thereof and supplemental thereto, we command
you that the said conclusions or determination of
facts and order, together with all proceedings
for the making of the same and all things touch-
40 ing and concerning the same, as fully and en-

Writ of Certiorari.

tirely 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, on
 the twenty-fifth day of May, 1917, that therein
 may be caused to be done what of right and ac-
 cording to law ought to be done. 10

WITNESS, the Honorable William S. Gum-
 mere, Chief Justice of our said Supreme Court,
 at Trenton, this day of May, 1917.

WM. C. GEBHARDT,
Clerk.

KALISCH & KALISCH,
Attorneys.

Allocatur, May 5, 1917. 20

SAMUEL KALISCH,
J. S. C.

30

40

Return.

Return.

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

10 We, Harry V. Osborne, Judge of the Court of Common Pleas, Essex County, New Jersey, and Joseph McDonough, Clerk of the Court of Common Pleas, Essex County, New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the Pleadings, Determination, Judgment Record and Proceedings, together with all things touching and concerning the same, together with the entire record as by the within Writ to us directed we are commanded.

20 IN WITNESS WHEREOF, we have
[L. S.] hereunto set our hands and the seal of said court and county, this 10th day of May, A. D. 1917.

H. V. OSBORNE,
Judge.

JOSEPH McDONOUGH,
Clerk of the Court of Common Pleas.
Essex County, N. J.

30

40

*Petition.***Petition.**

Filed June 30, 1916.

Essex County Court of Common Pleas.

ANNA KING, <i>vs.</i> SPLITDORF ELECTRICAL COMPANY, a corporation,	<i>Petitioner,</i> <i>Respondent.</i>	}	<i>On Petition under the Workmen's Compensation Act.</i>	10
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To the Honorable Judge of the Court of Common Pleas of the County of Essex: 20

The petition of Anna King, whose residence is at No. 104 Warren street, in the City of Newark, and County of Essex, respectfully shows:

1. That the name and residence of your petitioner are as above set forth, and that your petitioner is the daughter of John F. King, who departed from this life on the twenty-fourth day of January, nineteen hundred and fifteen. 30

2. That the said John F. King was an employee of the Splitdorf Electrical Company, a corporation organized under the laws of this State and was engaged as a factory employee by the said Splitdorf Electrical Company several months prior to the twenty-fourth day of January, nineteen hundred and fifteen.

3. That on the said twenty-fourth day of January, nineteen hundred and fifteen, while the said John F. King was engaged at his regular 40

Petition.

employment as aforesaid, a personal injury was caused to him by an accident, which arose out of and in the course of his employment, of which the actual or lawful imputed negligence of his employer was the natural or proximate cause, namely, that while painting the wall of the building in the said factory, he fell from the ladder upon which he was working, struck his head against a machine on the floor of said factory, with the result that his skull was fractured, and he died from said injuries.

10 4. That the said John F. King was on the last mentioned day receiving as a weekly wage from said employer the sum of twelve dollars per week.

20 5. That said employer had actual knowledge of such accident and death, as the said Splitdorf Electrical Company entered into an agreement in writing with your petitioner on the twenty-third day of June, nineteen hundred and fifteen, under which said agreement the said Splitdorf Electrical Company agreed to pay unto your petitioner the sum of five dollars per week, from February seventh, nineteen hundred and fifteen, for three hundred weeks, in weekly payments, together with burial expenses of said
30 John F. King, a copy of said agreement being annexed hereto and made a part hereof, under which said agreement said Splitdorf Electrical Company did pay unto your petitioner, between the fourth day of July, nineteen hundred and fifteen, and the thirteenth day of March, nineteen hundred and sixteen, the sum of one hundred and eighty dollars, together with sixty dollars, in partial discharge of its liability for the funeral expenses of the said John F. King.

40

Petition.

6. That your petitioner and her infant daughter were dependents of the said John F. King at the time of his death aforesaid, said infant daughter being then about eight months old; that on the sixth day of May, nineteen hundred and fifteen, your petitioner was admitted by the Surrogate of the County of Essex, as the guardian of the person and property of her said infant daughter, Margarete King, and that under the statute in such case made and provided, the said Splitdorf Electrical Company is liable to pay your petitioner as compensation for said injuries a sum not exceeding forty dollars, balance due for expenses of last sickness and burial of said John F. King, and a further sum of thirteen hundred and twenty dollars, discounted at five per centum simple interest, or payable at the rate of five dollars per week, for two hundred and sixty-four weeks. 10 20

7. That your petitioner requests and petitions that the compensation to be adjudged to her by the Court may be commuted at its present value when discounted at five per centum simple interest, because such commutation will be for the best interest of the petitioner and her ward, and will avoid undue hardship to either party, and if it, the compensation, cannot be commuted as aforesaid, then that it may be paid to your petitioner as the Court may direct. 30

8. Your petitioner further shows that the only compensation she has received from the said Splitdorf Electrical Company, has been the sum of one hundred and eighty dollars paid as aforesaid, at the rate of five dollars per week, between July fourth, 1915, and March thirteenth, 1916, and the further sum of sixty dollars, on account of funeral expenses of the said John F. King. 40

Petition.

Your petitioner therefore prays that the compensation to which your petitioner is entitled may be determined in the manner provided by the act of the Legislature of New Jersey, entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amendments thereof, and to that end that your Honor will, by order, fix a time and place for the hearing thereof, to be not less than three weeks after the filing of this petition.

ANNA KING,
Petitioner.

Dated June 21st, 1916.

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

Anna King, the above named petitioner, being duly sworn according to law, upon her oath says, that the facts set forth in the foregoing petition, so far as they relate to her own acts are true, and so far as they relate to the acts of others she believes them to be true.

ANNA KING.

Subscribed and sworn to before me,
this 21st day of June, A. D. 1916.

THOMAS A. KENNY,
Attorney at Law of New Jersey.

*Agreement.*AGREEMENT IN REGARD TO COMPEN-
SATION.

Articles of Agreement entered into this 23rd day of June, 1915, between the Splitdorf Electrical Company, party of the first part, and Anna King, individually, and as guardian of her minor child, Margarete King, party of the second part. 10

WHEREAS, On January 24th, 1915, John F. King, deceased, while in the employ of the party of the first part at a weekly wage of twelve (\$12.00) dollars, received injuries in an accident arising out of and in the course of his employment which caused his death; and

WHEREAS, the contract of employment between the party of the first part and the said John F. King, deceased, was subject to Section 2 of 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 4th, 1911, and the several supplements thereto and acts amendatory thereof, and 20

WHEREAS, John F. King, deceased, is survived by two dependents within the meaning of the above entitled act, that is, Anna King, the party of the second part, and her minor child, Margarete King; and 30

WHEREAS, according to Section 2, paragraph 12, of the above mentioned act the party of the first part is liable for the cost of burial of said John King, however, not to exceed One Hundred (\$100) dollars, and has heretofore paid the sum of Sixty (\$60) dollars in partial discharge of its liability therefore, and 40

Agreement.

WHEREAS, on the 6th day of May 1915, the said Anna King was admitted by the Essex County Surrogate as guardian of the person and property of said Margarete King; and

WHEREAS, the parties hereto have agreed upon the compensation to be paid and accepted in satisfaction of the claim arising out of said injury.

NOW THEREFORE, in consideration of the facts above stated, and of the sum of one (\$1.00) dollar each in hand paid unto the other by the parties hereto, the receipt whereof is hereby acknowledged, it is hereby agreed by and between the parties hereto as follows:

That the party of the first part will pay to the party of the second part the sum of five (\$5.00) dollars per week from February 7th, 1915, for three hundred (300) weeks in weekly payments as provided by the above entitled act, and upon the presentation of proper bills representing the cost of the burial expenses of said John King to the party of the first part will pay the sum of forty (\$40) dollars in discharge of the balance of its liability for funeral services as provided by said act.

The party of the second part in consideration of the payments above set forth hereby releases the said Splitdorf Electrical Company, its executors and assigns, from all claim or claims for compensation, wages or damages arising out of the injury above set forth.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

SPLITDORF ELECTRICAL CO.

T. A. MACKENZIE,
Treasurer.

A. S. OSBORNE,
Witness.

Order Fixing Time and Place of Hearing.

ANNA KING,
*Individually and as Guardian
of Margarete King.*

Signed, sealed and delivered in
the presence of

[SEAL]

WILLIAM P. MURPHY,
As to Anna King.

10

Order Fixing Time and Place of Hearing.**Essex County Court of Common Pleas.**

ANNA KING,

Petitioner,

vs.

SPLITDORF ELECTRICAL COMPANY,
a corporation,

Respondent.

20

On petition for compensation under "An Act prescribing the liability of an employer to make compensation for injuries, received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4, 1911, and the several supplements thereto and acts amendatory thereof.

30

A petition having been filed in this cause by the Petitioner praying for the compensation payable to the Respondent, it is on this 28th day of June, 1916,

ORDERED, that the hearing of said matter be and hereby is set down for Wednesday, the 27th

40

Order Fixing Time and Place of Hearing.

day of September, 1916, at the Court House (Common Pleas Court room), in the City of Newark, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard. And it is further

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

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

On motion of

WILLIAM P. MURPHY,
Attorney for Petitioner.

20 I hereby appoint and deputize John L. Kane to serve the within writ.

Witness my hand and seal this 29th day of June, 1916.

[L. s.] RALPH B. SCHMIDT,
Sheriff.
By GEO. F. BRANDENBURGH,
[L. s.] *Under Sheriff.*

Sheriff's fees, \$2.24.

30 Served the within petition and order June 29, 1916, personally upon M. W. Barlett, Sec. of the Splitdorf Electrical Company, a corporation, the within named respondent, at their place of business, 98 Warren street, Newark, N. J.

RALPH B. SCHMIDT,
By JOHN L. KANE, *Sheriff.*
Special Deputy.

Filed June 30, 1916.

40 JOSEPH McDONOUGH,
Clerk.

*Answer.***Answer.**

Filed December 21, 1916.

ESSEX COUNTY COURT OF COMMON
PLEAS.

ANNA KING,

*Petitioner,**vs.*SPLITDORF ELECTRICAL COMPANY,
a corporation,*Respondent.*

10

*On Petition.**Answer.*

The respondent, answering the petition filed in the above stated cause, says that:

20

1. It admits paragraphs one, two, three, four, five and eleven of the petition.

2. It admits the parts of paragraph six of the petition, referring to notice of the accident, and the payment made to the petitioner, and admits that the payments of compensation were to be made to those legally entitled to receive the same, as dependents of the above mentioned deceased.

30

3. It denies paragraphs seven and nine.

4. It leaves the petitioner to her proof of paragraph eight.

5. It says that the prayer in paragraph ten of the petition should not be granted.

KALISCH & KALISCH,
Attorneys for Respondent.

Dated December 19th, 1916.

40

Answer.

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

10 Isidor Kalisch, of full age, being duly sworn upon his oath, deposes and says that he is the attorney for the respondent in the foregoing answer, and its agent in this behalf; that he has read the foregoing answer, and that the matters and things therein contained are true to the best of his knowledge and belief.

ISIDOR KALISCH.

Sworn and subscribed to before me,
this 19th day of December, A. D.
1916.

20 JOHN L. HUGHES,
Master in Chancery of N. J.

Consent is hereby given to the filing of the written answer as of time.

WILLIAM P. MURPHY,
Attorney for Petitioner.

December 19, 1916, 4:35 P. M.

Filed December 21, 1916.

30 JOSEPH McDONOUGH,
Clerk.

Amended Petition.

Amended Petition.

Filed January 4, 1917.

ESSEX COUNTY COURT OF COMMON
PLEAS.

10

ANNA KING,

Petitioner,

vs.

SPLITDORF ELECTRICAL COMPANY,
a corporation,

Respondent.

*On Petition
under the
Workmen's
Compensation
Act.*

*Amended
Petition.*

*To the Honorable Judge of the Court of Com- 20
mon Pleas of the County of Essex:*

The petition of Anna King, whose residence is at No. 104 Warren street, in the City of Newark, County of Essex, and State of New Jersey, respectfully shows:

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

2. That your petitioner is the daughter of one John F. King, who departed this life on January 24th, 1915. 30

3. That said John F. King was an employee of the respondent, the Splitdorf Electrical Company, a corporation organized under the laws of this State, and was engaged as a factory employe of said Splitdorf Electrical Company several months prior to January 24th, 1915, and continued to be employed as aforesaid up to January 24th, 1915. 40

Amended Petition.

4. That on said January 24th, 1915, while the said John F. King was engaged at his regular employment as aforesaid, a personal injury was caused to him by an accident, which arose out of and in the course of his employment, of which the actual or lawful imputed negligence
10 of his employer was the natural or proximate cause, namely, that while painting the wall of the building of the respondent in which he was employed, he fell from the ladder upon which he was working, struck his head against a machine on the floor of said building, with the result that he received injuries which caused his death on January 24th, 1915.

5. That said John F. King was on the last mentioned day receiving as a weekly wage from
20 said employer the sum of \$12 per week.

6. That said employer had actual knowledge of said accident and death at the time of its occurrence, as said employer paid to your petitioner between February 6th, 1915, and March 13th, 1916, the sum of \$185 as compensation under said Act, and the further sum of \$60 in partial discharge of its liability for the funeral expenses of the said John F. King, and agreed
30 to pay to your petitioner the further sum of \$1,315 at the rate of \$5 per week.

7. That your petitioner and her infant daughter Margarete King were actual dependents of the said John F. King at the time of his death as aforesaid, said infant daughter being then about eight months old.

8. That on May 6th, 1915, your petitioner was granted letters of guardianship of the person and property of said infant daughter Margarete King by the Surrogate of the County of
40 Essex.

Amended Petition.

9. That under the statute in such case made and provided the said Splitdorf Electrical Company is liable to pay your petitioner as compensation the sum not exceeding \$40, balance due for funeral expenses and burial of the said John F. King, and the further sum of \$1,315, discounted at 5 per centum simple interest, or payable at the rate of \$5 per week for 263 weeks. 10

10. That your petitioner requests and petitions that the compensation to be adjudged to her by the court may be commuted at its present value when discounted at 5 per centum simple interest, because such commutation would be for the best interest of the petitioner and her ward, and will avoid undue hardship to either party, and if the compensation cannot be commuted as aforesaid, then that it may be paid to your petitioner as the court may direct. 20

11. Your petitioner further shows that the only compensation she has received from the said respondent has been the sum of \$185 paid as aforesaid, at the rate of \$5 per week between February 6th, 1915, and March 13th, 1916, and the further sum of \$60 on account of funeral expenses of the said John F. King.

Your petitioner therefore prays that the compensation to which your petitioner is entitled may be determined in the manner provided by the act of the Legislature of New Jersey, entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by an employee, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the supplements thereto and amend- 30
40

Amended Petition.

ments thereof, and to that end your Honor will, by order, fix a time and place for the hearing thereof.

Dated December 20th, 1916.

ANNA KING,
Petitioner.

10

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

Anna King, the above named petitioner, being duly sworn according to law, upon her oath says, that the facts set forth in the foregoing petition, so far as they relate to her own acts are true, and so far as they relate to the acts of
20 others she believes them to be true.

ANNA KING.

Subscribed and sworn to before me
this 20th day of December, 1916.

ABRAM FREIMAN,
A Master in Chancery of New Jersey.

Filed January 4, 1917.

30

JOSEPH McDONOUGH,
Clerk.

40

Statement of Credits.

William P. Murphy,
 Counsellor at Law,
 Lawyers Bldg., 164 Market St.,
 Newark, N. J.
 Telephone 7958.

April 11, 1917.

Hon. Harry V. Osborne, 10
 Judge of Essex County Court of Common
 Pleas,
 Court House, Newark, N. J.
King v. Splitdorf Electrical Co.

Dear Sir:

I am enclosing herewith statement of the credits which should be allowed the respondent in the above matter. This statement is satisfactory to the respondent as shown by the endorsement of its attorney thereon.

I might add that I have spent considerable 20
 time on this case. I prepared an agreement under which payments were to be made, had the petitioner appointed guardian of her infant daughter, and supervised the weekly payments from June 6th, 1915, to March 10th, 1916. In addition to the above I spent two and one-half days in court waiting for the case to be tried.

Yours respectfully,

WILLIAM P. MURPHY. 30

WPM—LG

State of credits, in re suit of King vs. Splitdorf Electrical Co., under Workmen's Compensation Act.

Allowance from Jan. 24, 1915, (date of death) to April 4, 1917—114 weeks, at

\$5 per week	\$570.00
Allowance for funeral expenses.....	100.00

\$670.00 40

Statement of Credits.

Cr.

57 weeks at \$5 per week for compensation	\$285.00
Paid on account of funeral ex- penses	60.00
	\$345.00

10

Amount due and unpaid April 4, 1917. \$325.00

The above statement is correct as shown by the respondent's books (without, of course, admitting liability to pay any compensation).

KALISCH & KALISCH,
Attorneys of Respondent.

20

30

40

Stipulation.

Stipulation.

Filed April 18, 1917.

ESSEX COUNTY COURT OF COMMON
PLEAS.

ANNA KING, vs. SPLITDORF ELECTRICAL COMPANY, a corporation,	Petitioner, Respondent.	}	On Petition under the Workmen's Compensation Act. Stipulation.	10
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It is hereby stipulated and agreed by the
 above named parties through their respective
 attorneys, for the purpose of aiding the court
 in the determination in the above matter, as
 follows: 20

1. That the name, residence and relationship
 of the petitioner is as set forth in paragraph
 1 and 2 of the amended petition filed in this
 cause.

2. That John F. King, was an employe of
 the respondent, and met his death while so em- 30
 ployed by an accident arising out of and in the
 course of his employment, as alleged in para-
 graph 3 and 4 of said amended petition.

3. That said John F. King was receiving
 from said respondent the sum of \$12 per week,
 as a weekly wage, at the time of the accident
 aforesaid, as alleged in paragraph 5 of said
 amended petition.

4. That said respondent had actual knowl-
 edge of said accident and death, and has paid 40

Stipulation.

to said petitioner the sum of \$245, as compensation under the Act, as alleged in paragraph 6 of said amended petition.

10 5. That said petitioner was granted letters of guardianship of the person and property of her infant daughter Margarete King by the Surrogate of the County of Essex, as alleged in paragraph 8 of said amended petition.

6. That the only question in dispute is as to whether or not the petitioner and said infant daughter Margarete King, or either of them, are actual dependents within the meaning of the Workmen's Compensation Act.

WILLIAM P. MURPHY,
Attorney for Petitioner.

20

KALISCH & KALISCH,
Attorneys for Respondent.

Filed April 18, 1917.

JOSEPH McDONOUGH,
Clerk.

30

40

Anna King, direct.

ESSEX COUNTY COURT OF COMMON
PLEAS.

Wednesday, January 10, 1917.

ANNA KING,

Petitioner,

vs.

SPLITDORF ELECTRICAL COMPANY,

Respondent.

On Petition 10
for
Compensa-
tion.

Before Hon. Harry V. Osborne, Judge.

For petitioner appears William P. Murphy,
Esq.

For the respondent Messrs. Kalisch & Kalisch,
by Isidor Kalisch, Esq. 20

(A stipulation is filed.)

ANNA KING, petitioner, sworn in her own be-
half.

Direct examination by Mr. Murphy.

Q You are the daughter of John F. King
who lost his life January 24, 1915, as the re-
sult of an accident? A Yes, sir. 30

Q Where was he employed at this time? A
Splitdorf's.

Q Where were you residing at this time? A
422 High street.

Q With whom? A A lady named Miss Mc-
Kale.

Q With whom were you residing at the time
and who constituted your family? A My
father. 40

Anna King, direct.

Q Anybody else? A My sister.

Q Anybody else? A No, sir.

Q Was your daughter residing with you? A Yes, sir.

10 Q What did your household consist of? A My father.

Q Did you have a flat? A No, sir.

Q What did you have? A I had two rooms.

Q Furniture? A Yes, sir.

Q Who furnished the rooms? A My father.

Q What wages was your father earning at this time? A \$12 a week.

Q What money did he pay you? A Gave me \$8.50.

Q Every week? A Every week.

20 Q What did you do with this \$8.50 every week? A I paid \$5.50 for rent and the rest I lived on.

Q And you paid what for rent? A \$5.50.

Q Two furnished rooms? A Yes, sir.

Q Did you have any other income at that time? A Not at that time.

Q Did you get money from any other source? A No, sir.

30 Q You are sure about that? A About a few months before my father got killed then my sister came and lived with me.

Q That is the time I am speaking about? A Oh, yes, I got my sister's wages too.

Q How much did she give you? A \$4 a week.

Q Your father lived there with you at this time? A Yes, sir.

Q Did he have his meals there? A Yes, sir.

40 Q How many? A He had one meal a day.

Anna King, direct.

Q What did that meal cost? A Twenty-five cents.

Q That is, about twenty-five cents? A Yes, sir.

Q What did it cost you to furnish a meal to your father per week? A About \$3.25.

Q And you were getting some money from your sister? A Yes, sir. 10

Q How much? A \$4 a week.

Q She was boarding there? A Yes, sir.

Q She was getting how many meals a day? A She ate two meals a day..

Q Could you have maintained that home on the \$4 a week which you received from your sister? A No, sir.

Q You weren't earning anything at the time? A No, sir. 20

Q Why? A Well, I had to mind the baby.

Q How old was the baby at that time? A She was nine months old—ten months old when my father got killed. She was a little infant when I came with my father.

Q Where is the father of the baby? A In New York.

Q Did he ever contribute anything towards the support of the baby or towards your support? A No, sir. 30

Q Did you take any steps to compel him to contribute to the support of the baby and yourself? A I tried to.

Q What did you do? A I brought him to court.

Q Where? A In New York.

Q And what was the outcome of that, do you know? A Nothing at all.

Q He didn't give you anything at all? A No, sir. 40

Anna King, direct.

Q Is he married? A Yes, sir.

Q Got a family? A He has got a baby.

Q Still living in New York? A I suppose he is.

10 Q You haven't earned any money since your father's death? A No, sir.

Q How long was it before your father's death that you earned any money yourself? A I haven't earned any money since the baby was born.

Q That is about ten months before his death? A Yes, sir.

Q Haven't earned any money since? A No, sir.

20 Q What is your means of support now? A My sister.

Q What does she give you? A She gives me \$10 a week.

Mr. Kalisch. I object to that as immaterial.

Mr. Murphy. (After discussion.) I will not insist on the question.

Q You were appointed the guardian of your daughter, were you?

30 *The Court.* That is part of the stipulation.

Q When you were employed before your father's death what salary did you receive? A I made \$6 a week.

Q Where? A In New York.

Q What doing? A On a machine.

Q Ran a machine? A Yes, sir.

40 Q You have a brother, have you? A Yes, sir.

Anna King, cross.

Q Did he contribute anything towards the support of the family prior to your father's death? A No, sir.

Q Where was he at that time? A At the time my father died?

Q Yes. A He was living in New York.

Q Did he visit you occasionally? A No, sir. 10

Q He didn't visit you at all? A No, sir.

Cross examination by Mr. Kalisch.

Q You say you were earning six or eight dollars a week? A Yes, sir.

Q How much did you use towards your own support and that of the child? A I never went to work since the baby was born. Before the baby was born I went to work. 20

Q You hadn't worked for nine months from the time the baby was born until the time your father was killed; is that correct? A Yes, sir.

Q Did you have some of the money saved up? A No, sir.

Q You spent it all, did you? A Yes, sir.

Q You say that he gave you \$8.50 per week? A Yes, sir.

Q What meal did he eat home? A He ate his supper. 30

Q Did he eat breakfast? A No, sir.

Q Did he work Sundays? A Some Sundays he worked.

Q How many Sundays in the month did he work? A I couldn't tell you how many Sundays.

Q Usually he didn't work Sundays; is that correct? A Well, when he used to get extra work he used to work Sundays. 40

Anna King, cross.

Q So that on Sunday when he wasn't working he ate three meals a day? A Yes.

Q Out of that money that he gave you did you purchase things for the baby? A Yes, sir.

Q You did? A Yes, sir.

10 Q How much would you say in nine months that would average per week, the expenditures you made from the amounts your father gave you each week for the purpose of making provision for the baby? Do you understand my question? A Yes, sir; I understand.

Mr. Murphy. The question is how much you expended for the baby out of the money your father gave you.

Witness. About \$3 out of it.

20 Q In the whole nine months? A More than that. I couldn't exactly tell you how much.

Q What would you pay, for example, for the baby out of the money which your father gave you per week? A A little dress and stockings, hat and coat.

Q Shoes you would have to buy quite often? A She never wore shoes.

30 Q I understand \$5.50 was given you toward room rent. A Yes, sir.

Q And \$3.50 toward the housekeeping? A Yes.

Q You say \$5.50 and \$3.50. I understand \$8.50 was the amount he gave you? A That is all. \$8.50 he used to give me.

Q He couldn't give you \$5.50 and \$3.50 because that would make \$9. A He used to give me \$5.50 for room rent.

40 Q And \$3 for the housekeeping? A Yes, sir.

Anna King, cross.

Q From the \$8.50 how much was expended for the child? A Spent fifty cents out of that \$3.50 a week for her.

Q Had your father always lived with you?

A I only lived with him since I came to Newark here.

Q Did you have these three furnished rooms before your father started to live with you? A No, sir, my father lived there first. 10

Q Did you ever board in the neighborhood where you had these rooms where your father lived with you? A No, sir.

Q Do you know what the ordinary charges for board and lodging are, how many dollars per week? A No, sir.

Q Well, now, the \$3 that your father gave you for the housekeeping wasn't enough without the \$4 that your sister gave, was it? A No, sir. 20

Q And the \$5.50 he gave you was for his room? A Yes, sir, for his room.

Q And the \$3 that he gave you was for his eating? A Yes, sir.

Q Did he ask you to keep house for him? A Well, I had no other place to go.

Q Did he ask you to keep house for him? A Yes, sir. 30

Q Did he agree to pay you for that? A Yes, sir.

Q What did he agree to give you for keeping house for him? A Well, he gave me the \$8.50; that is all he gave me.

Q The \$8.50 I understand was \$5.50 for the rooms and \$3.00 for the board? A Well, he used to give me extra money.

Q And the extra money was for keeping the house? A For the baby and I. 40

Anna King, cross.

Q For keeping the house and taking care of his things and all that sort of thing? A Yes, sir.

Q Positive? A Yes, sir.

Q Let me get this absolutely clear. \$3 was given for his meals? A Yes, sir.

10 Q \$5.50 was given for his room? A Yes, sir.

Q And the extra money that he gave you was because you looked after his things and took care of the household for him? A Yes, sir.

By the Court.

Q Who did you live with before the baby was born? A I lived with my aunt.

Q Whereabouts? A In New York.

20 Q Where did your father live at that time?

A Lived over here in Newark.

Q Who with? A With this lady.

Q I don't know who this lady is? A Miss McKale.

Q He boarded there? A No, sir.

Q Just roomed? A Yes, sir.

Q This baby was born and you gave up work? A Yes, sir.

30 Q And did your father come to live with you? A My aunt brought me over here.

Q What arrangement was made between your father and you? A He asked me if I would keep the furnished rooms for him and I said yes.

Q Did he or you get the furnished rooms? A He had them.

Q What became of this woman that he was living with? A This woman owns the house. It is a furnished room house.

40 Q Then you went to live with him? A Yes, sir.

Anna King, cross.

Q When was that? A Going on three years ago.

Q About three years ago? A Yes, sir.

Q Did he work in New York then? A He worked for Splitdorf and when the Splitdorf moved over here we moved over here.

Q How old are you? A Twenty-three. 10

Q How old were you when this happened when you first went to live with your father after the baby was born? A Well, I was about twenty.

Q You continued to live with him up to the time of his death? A Yes, sir.

Q How often did he come home? A He came home every night.

Q And he had his breakfast at home? A No. 20

Q Did he have his lunch at home? A No, sir.

Q Did he have his dinner home at night? A Yes, sir.

Q You prepared it for him? A Yes, sir.

Q Took care of the rooms? A Yes, sir.

Q Boarded yourself? A Yes, sir.

Q Now, he gave you out of his wages some money, didn't he? A Yes, sir.

Q When he first began to give you this money when you went there to live with him did you have any talk with him about what arrangement should be made, what you should use it for? A No, sir, no talk. 30

Q At that time? A No, sir..

Q How much did he give you? A He gave me \$5.50 for the room and \$3 for his eating.

Q That was the rent? A Yes, sir.

Q Had he been paying that rent before? A No, he only paid \$2.50 for himself. 40

Anna King, cross.

Q Did he take more rooms when you went there to live with him? A He had to get an extra room.

Q The rent was \$5.50? A Yes, sir.

Q Were the rooms furnished? A Furnished.

10 Q It wasn't your furniture or his furniture?
A No, sir.

Q Did he tell you how much the room rent would be? A He didn't know himself. He asked the lady.

Q When he gave you the money every week or the first week he gave it to you did he say anything about how much of it was to be paid for room rent? A Yes, sir.

20 Q Who paid the room rent? A I paid it.

Q He gave you the money and you paid it?
A Yes, sir.

Q How much did he give you a week? A \$8.50.

Q So when you paid the room rent out of the \$8.50 you have how much left? A \$3 left.

Q What did you use that \$3 for? A Eating.

30 Q How about your clothing? A He used to give me extra money.

Q For your clothing? A For me and the baby.

Q Did you have any other means of support? A No, sir.

Q You didn't work? A No, sir.

Q You took care of the rooms and cooked his dinner? A Yes, sir.

40 Q Did anybody else contribute to the support of the household, that is, anybody else pay you any money to live on? A No.

Anna King, cross.

Q Did that condition continue up to the time of his death? A No, my little sister came and she boarded with me four months before my father was killed.

Q How much did she pay you? A She paid me \$4 a week.

10

By Mr. Kalisch.

Q It cost practically the \$7 a week to board your father, didn't it, and give him his room and everything? A You mean \$8.50?

Q Yes. A It used to do the two of us. It done the two of us, the \$8.50, before my sister came and boarded with me.

Q And when your sister came and boarded with you he still gave you the \$8.50, did he? A Oh, yes.

20

Q And you were twenty years old then? A Yes, sir.

Q When your father died? A No. I was about twenty-one.

The Court. When the baby was born and this arrangement was entered into she was twenty.

Q When you started to live with your father you were how old? A Twenty.

30

Q And when he died you were how old? A Twenty-one.

By Mr. Murphy.

Q How much extra money did he give you? A \$3, \$3.50.

By the Court.

Q Give me the date of the birth of this child? A May 7th.

Q What year? A 1914, I think it was.

40

Anna King, cross.

Q How old is the child now? A She will be three in May.

By Mr. Murphy.

Q. How much extra money did your father give you for clothes.

10

The Court. Do you think that is material.

Mr. Murphy. I will not pursue it. I have further testimony to the same effect.

Mr. Kalisch. The respondent is willing to admit that all the witnesses that the petitioner desires to call in addition to the petitioner will corroborate the petitioner's story in every particular.

20

The Court. Unless that is contradicted you need not call these witnesses. The question involved in this case is a question of law as to whether there was dependency.

Mr. Kalisch. I rest my case and I maintain that the petitioner is not entitled to compensation on her own testimony, that she said she was twenty years old when her father died.

30

The Court. There is no limitation in the act.

Mr. Kalisch. Eighteen.

The Court. When you get beyond eighteen the presumption ceases and then you have to prove dependency.

40

Mr. Kalisch. As I understand the act, it says that up to sixteen, living with the parents, there is a presumption of dependency unless the child be physically incapacitated or mentally deficient and there

Anna King, cross.

is no proof of either in this case, and therefore they are not entitled to compensation as regards the daughter.

The Court. (After discussion.) The question is whether an illegitimate child of a child of the decedent can be considered within the meaning of the act a grandchild. 10

Mr. Kalisch. Yes, and I maintain it is a very large stretch of the imagination to hold that this child is a grandchild.

The Court. I do not think it would take a very large stretch of the imagination to find that the child is entitled in view of the language of the act.

Mr. Kalisch. I want to say this, that under the law in the State of New Jersey I do not understand that a grandparent is bound to support an illegitimate grandchild. 20

The Court. It would not be a dependent in this case unless the act can be construed so as to make the child a grandchild.

I will take the matter under consideration with reference to the two questions.

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

Filed April 16, 1917.

ESSEX COUNTY COURT OF COMMON
PLEAS.

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 ANNA KING, Petitioner, on behalf of herself and MARGARETE KING,
vs.

 SPLITDORF ELECTRIC COMPANY,
Respondent.

*On Petition
for Compensation.**Findings of
Fact and Determination.*

20 For Petitioner, William P. Murphy, Esq.
For Respondent, Isidor Kalisch, Esq.

OSBORNE, J.

30 The petition in this case, filed and served on the 29th day of June, 1916, alleges that petitioner, a resident of the City of Newark, is the daughter of John F. King, who died on the 24th day of January, 1915, that on and prior to his death he was an employee of the respondent company, and while engaged in his regular employment suffered a personal injury by an accident which arose out of and in the course of his employment through falling from a ladder and striking his head against a machine on the floor while painting the wall of a building in the factory of respondent, which fall resulted in injuries from which he died. That he was in receipt of wages amounting to \$12 a week, and that respondent had notice of the accident. The petition further alleges that petitioner and her

40 infant daughter, then about eight months old,

Findings of Fact and Determination.

resided with and were dependent upon the deceased at the time of his death, and that petitioner was regularly appointed the guardian of her said daughter. The answer was filed by the respondent on the 21st day of September, 1916. On the 4th day of January, 1917, an amended petition was filed setting up, among other things, that respondent had paid to petitioner the sum of \$285 as compensation under the act and the sum of \$60 in partial discharge of its liability for funeral expenses and agreed to pay the petitioner the sum of \$1,350 at the rate of \$5 a week. Petitioner prays for commutation of the amount due. 10

The parties thereafter filed a stipulation admitting the allegations of the petition as above set forth and reciting that the only question in dispute is whether or not petitioner and her infant daughter, or either of them, were actually dependents within the meaning of the act. Testimony was taken on the 10th day of January, 1917. The petitioner, being sworn, testified that upon the birth of her child, the infant in question in this case, she gave up work and went to live with her father, the deceased, that she was then twenty years of age, and that when her father died she was twenty-one, that the child was born on the 7th day of May, 1914. 20 30

From the testimony, the argument and the briefs, it appears that the child in question is illegitimate. The only question raised by the stipulation and briefs is that of the dependency of the petitioner and her child.

As to the petitioner, I find from an examination of the stipulation and the testimony that she was in fact a dependent upon her father at the time of his death, but that she is excluded 40

Findings of Fact and Determination.

from the benefits of the act by that subdivision of Paragraph 12 which provides that:

10 “In computing compensation to orphans or other children, only those under eighteen years of age shall be included, and only during the period in which they are under that age, at which time payment on account-
of such child shall cease; *provided, how-*
ever, that payments to such physically or mentally deficient children as are by such reason dependent shall continue during the full term of compensation payments.”

20 This brings us to the second aspect of the question of dependency, and that is whether the grandchild of the deceased, assuming it to have been the illegitimate child of the petitioner, is
entitled to compensation as a dependent.

The underlying purpose of the act is to provide for those dependent upon the deceased workman.

30 I find that at the time of decedent's death this grandchild was in fact a dependent upon him and furthermore was an actual member of his household, that he had assumed regardless of the child's illegitimacy, the burden of providing for it. The relation of grandparent and grandchild is a matter of blood and not of legitimacy and the illegitimacy of the latter does not destroy that relationship. Grandchildren are, in common parlance, children of children; or a son's daughter's child, a man's nearest blood relation after his own child, persons of the second descent, &c. 20 *Cyc.* 1289. Legitimacy merely confers certain legal rights not possessed by illegitimate children.

40 The fact that the putative father of the illegitimate child might be liable for its support

Findings of Fact and Determination.

does not change the situation in this case under the ruling of the Supreme Court in the case of *Conners v. Public Service Electric*, 97 Atl. 792, where the court says:

“We do not understand the decision of the Court of Errors in the Havey case to mean that a minor sister cannot be classed as a dependent of a deceased adult brother because she has a father who is under obligations to support her. Such a ruling would shut out the minor brothers and sisters in a case, for example, where the father was incapacitated and earned nothing, and the adult brother was the sole support of the family.” 10

The mere reference in the act to illegitimate children being presumed to be dependent when they are part of the decedent's household at the time of his death does not necessarily exclude the claim of an illegitimate grandchild, who was a part of the decedent's household at the time of his death, to be considered a dependent in fact under the act and I am of the opinion that such was the situation in this case. 20

Commutation is denied. Title of proceeding amended to read: Anna King, petitioner, on behalf of herself and of Margarete King, etc. 30

The petitioner therefore is entitled to recover on behalf of Margarete King, for one dependent, thirty-five per centum of the wages of decedent for a period of three hundred weeks at the minimum payment of \$5 a week, and \$100 for funeral expenses, credit to be given for the payments already made on this account.

Payments to be made to petitioner on behalf of the infant, petitioner being the legal guardian of said child. 40

Findings of Fact and Determination.

Judgment will be entered in favor of the petitioner and against the respondent in the sum of five dollars per week payable for a period of two hundred and forty three (243) weeks, and the further sum of forty dollars for funeral expenses, together with costs.

10 Counsel for petitioner allowed a counsel fee of one hundred dollars to be paid by petitioner out of payments now past due.

H. V. OSBORNE,
Judge.

Filed April 16, 1917.

JOSEPH McDONOUGH,
Clerk.

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*Judgment.***Judgment Record.**ESSEX COUNTY COURT OF COMMON
PLEAS.

27161

 ANNA KING, on behalf of her-
self and MARGARETE KING,
Petitioner,
vs.
 SPLITDORF ELECTRICAL COMPANY,
a corporation,
Respondent.

*On Petition
on Determ-
ination of
Court After
Hearing.*

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*Judgment
Entered*
*April 16th,
A. D. 1917.*
*Damages \$
Costs, \$37.45.*

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William P. Murphy, Attorney of Petitioner.

 Judgment of determination of court after
hearing in the above entitled action was ren-
dered on the sixteenth day of April, A. D. nine-
teen hundred and seventeen in favor of the said
petitioner, Anna King, on behalf of herself and
Margarete King, and assess the damages
against the respondent, Splitdorf Electrical
Company, a corporation, in the sum of five
dollars per week payable for a period, two
hundred and forty-three weeks and the fur-
ther sum of forty dollars, together with costs.

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 And the Court further allows the attorney of
petitioner the sum of one hundred dollars, in
addition to costs allowed by law, said sum to
be paid by petitioner out of payments now past
due.

 Judgment entered and signed April 15, 1917.
H. V. OSBORNE,
Judge.

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Book, P. 2—page 512.

*Reasons.***Reasons.**

Filed May 5, 1917.

New Jersey Supreme Court.

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 SPLITDORF ELECTRICAL COMPANY,
Prosecutor,
vs.
 COURT OF COMMON PLEAS in
 and for the County of ES-
 sex and JOSEPH McDONOUGH,
 Clerk of the said Court of
 Common Pleas, and ANNA
 KING and MARGARETE KING,
Defendants.

*On Cer-
tiorari.**Reasons.*

20

The prosecutor presents the following reasons for setting aside the proceedings, determination, statement of facts and judgment brought before this honorable court by the Writ of Certiorari in the above entitled cause:—

30 1. Because the Trial Court erroneously and improperly determined that the petitioner below was entitled to recover on behalf of Margarete King for one dependent, five dollars a week, for a period of three hundred weeks.

2. Because the Trial Court erroneously and improperly found that Margarete King was a dependent within the terms of the Workmen's Compensation Act, and under the provisions of the same entitled to receive compensation for the death of John F. King, of whom she was
 40 the illegitimate grandchild.

Reasons.

3. Because the Trial Court erroneously and improperly ordered compensation to be paid to the said Anna King, on behalf of the infant, Margarete King.

4. Because the Trial Court erroneously and improperly found that an illegitimate grand-child of the deceased employee was a dependent under the Workmen's Compensation Act of New Jersey. 10

KALISCH & KALISCH,
Attorneys of Prosecutor.

Acknowledged May 11, 1917.

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Opinion of Supreme Court.

Opinion.

Filed September 17, 1917.

NEW JERSEY SUPREME COURT.

10	SPLITDORF ELECTRICAL COMPANY, <i>Prosecutor,</i>	}
	<i>vs.</i>	
	ANNA KING, <i>et als.</i> , <i>Defendant.</i>	

20 Certiorari to review an order of the Court of Common Pleas of the County of Essex awarding compensation under the Workmen's Compensation Act.

1. An illegitimate child of the daughter of an injured workman is not a dependent of the daughter's father as defined in the Workmen's Compensation Act of this State.

2. The illegitimate child of a deceased workman's daughter is not a grandchild of such workman within the meaning of the statute.

30 Argued June Term, 1917, before Justices Swayze, Bergen and Black.

Kalisch & Kalisch, for Prosecutor.

William P. Murphy, for Defendants.

The opinion of the Court was delivered by BERGEN, J.:

40 The petition for compensation in this case was filed by a daughter of a deceased workman on behalf of herself and her illegitimate child. The trial court properly decided that the daughter, because of her age was not a

Opinion of Supreme Court.

dependent, but held that her illegitimate child was a grandchild within the statutory definition and therefore entitled to compensation, and judgment was thereupon entered according to such findings, to review which a writ of certiorari was allowed. The proofs in the case show that the daughter was not living with her father when her child was born, but that after that event she took the child to the place where her father was living; that an additional room was leased; that the father paid her \$8.50 a week for room rent and board, taking only one meal a day except Sundays, and that out of this the daughter paid the rent \$5.50 using the balance for food; that the father occasionally gave her extra money and that at the time of his death her sister boarded with her paying \$4.00 a week. This is the only proof of assumption by the father of any responsibility for the support of the illegitimate child of his daughter and it is not sufficient to raise a presumption that he was treating such child as a dependent even if that be sufficient under our statute, which we think it would not be. The right to this class of compensation is the creature of the statute and cannot be extended by judicial construction in opposition to the words of the act. By the amendment of the Act P. L. 1913, 302, the term "dependents" is made to apply to and include a designated class of persons, among them being, "grand children, posthumous children, (and) illegitimate children" the latter to be presumed to be dependent when they are a part of the decedent's household. There is nothing in the statute making the illegitimate children of an injured workmen's child his dependents unless they fell

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Opinion of Supreme Court.

within the class denominated grandchildren within the meaning of the statute. The court below held that such a child was a grandchild.

10 We are of opinion that this was erroneous, for at common law a bastard was *nullius filius*, and if not a child of any one could not be a grandchild. Our statute permitting inheritance between a mother and her illegitimate child does not establish any relationship between such child and the parents of its mother, nor can such child inherit from the mother's ancestors, for except as changed by the statute the common law prevails.

20 The Workmen's Compensation Act imposes new and extensive obligations upon the employer of workmen in favor of the latter's dependents and expressly defines who are to be included as dependents, among them being the illegitimate children of the workman residing in his family, to whom he owes the duty of maintenance, and to impose a further obligation on the employer, not provided for by the statute, would be legislation and not judicial construction.

30 In the absence of anything to the contrary we must conclude that when the legislature made use of the descriptive term grandchildren, it used it in its ordinary sense and as applicable only to persons who stood legally in that relations to the decedent workman, and not as intending to alter the common law rule by making one who could not stand in such relation a grandchild. The legislature had in mind the question of illegitimacy for it provided for the illegitimate children of the decedent, but went no further, and we are now

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Opinion of Supreme Court.

asked to supply what it omitted by construing the law to include among grandchildren those who have no such legal status.

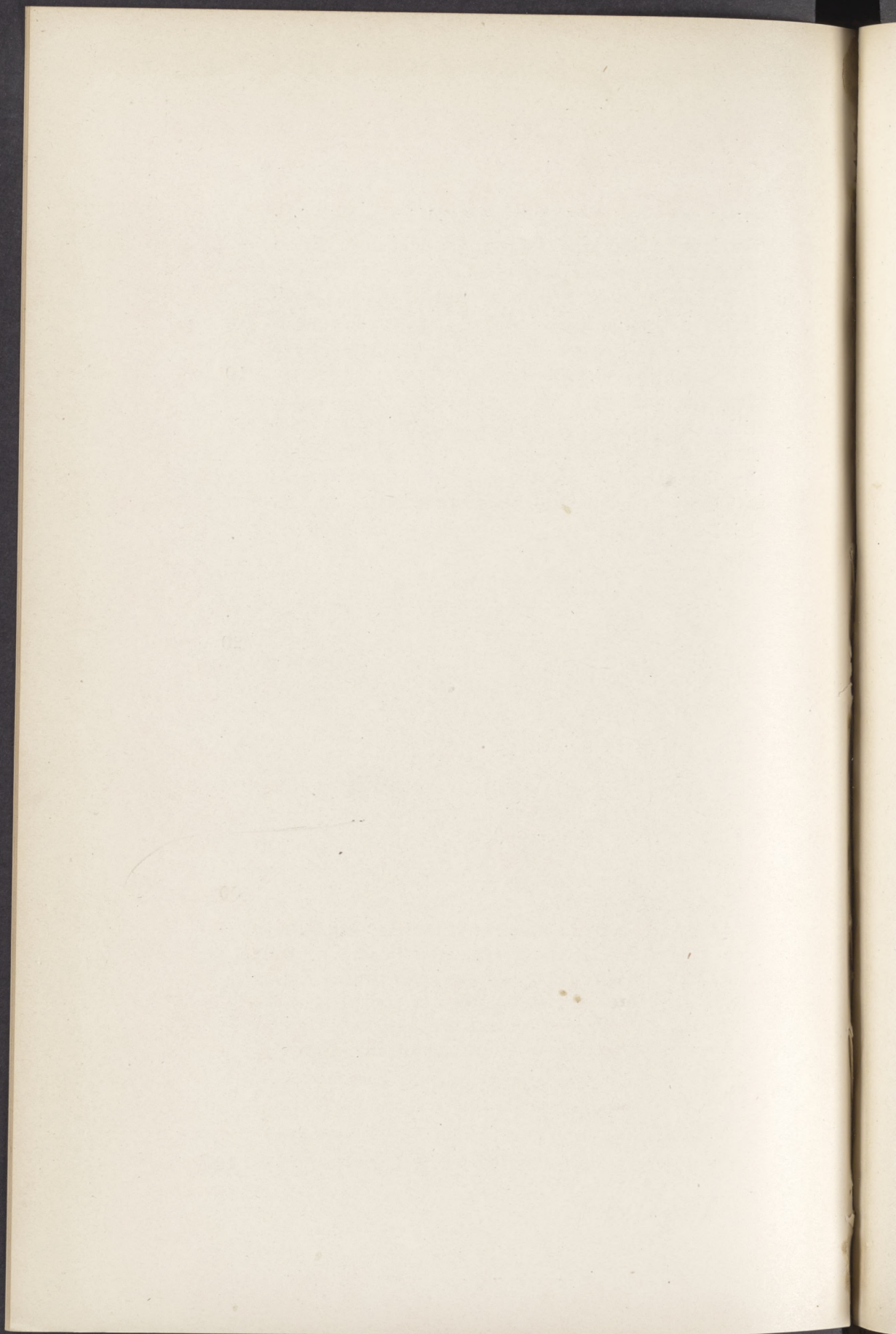
If the legislature had intended that the bastard children of a decedent workman's children were his dependents, it could readily have said so, and having omitted to include such persons among the class of dependents entitled to the benefit of the act, the court cannot supply the omission by what would clearly be the exercise of a legislative function. 10

The judgment will be reversed and a new trial awarded.

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New Jersey Court of Errors and Appeals

ANNA KING, on behalf of her- self and MARGARITE KING, Appellant-Petitioner, vs. SPLITDORF ELECTRICAL COMPANY, Appellee-Respondent.	}	<i>On Appeal from New Jersey Supreme Court.</i>
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Brief of Respondent.

The facts in the above case are, briefly: That one John F. King, an employee of the above respondent, died January 24, 1915, as the result of an accident arising out of and in the course of his employment with the above respondent and left him surviving, a daughter aged twenty years who was a resident with him at the time of his death, and who at that time had with her, her illegitimate child, Margarite King. The only question raised in this appeal is whether the illegitimate child, Margarite King, was entitled to compensation as a dependent of the above mentioned John F. King (case, p. 1; case, p. 22, par. 6).

From the testimony in the case, appearing on pages 23-35, inclusive, it will appear that neither the daughter nor her illegitimate child was an actual dependent under the provisions of the Workmen's Compensation Act as amended in 1913 at the time of the death of John F. King.

The Determination of Facts and Order of the Essex County Common Pleas Court appear on pages 36-40, inclusive, in the State of the Case.

Compensation was denied the deceased's daughter by reason of the fact that at the time of the deceased's death she was twenty years of age, and, therefore, by reason of that subdivision of Paragraph 12, which provides: "In computing compensation to orphans and other children, only those under eighteen years of age shall be included, &c.," the deceased's daughter, Anna King, was not entitled to compensation, and the only other question was, whether her illegitimate child, Margarite King, came within the Twelfth Paragraph of the Workmen's Compensation Act of 1911, as amended by Chapter 244, P. L. 1914. The trial court held that the illegitimate child of the daughter of the deceased, being a child of a child of the deceased, could be brought within this section. The trial court based his findings upon the stipulation, hereinafter mentioned, and the testimony of the witness, Anna King. See page 37, lines 32-36, which reads as follows:

"From the testimony, the argument and the briefs, it appears that the child in question is illegitimate. The only question raised by the stipulations and the briefs is that of the dependency of the petitioner and her child."

The appellant's reasons on appeal are on page 1 of the case. It will appear that there was an amended petition filed January 4th, 1917, by the petitioner, which amended petition appears on pages 15-16-17-18 of the State of the Case, and in Paragraph 7 of the amended petition it was alleged that Margaret King, who was the daughter of the deceased, and her infant illegitimate daughter also were actual dependents of the said John F. King at the time of his death. At the time of the trial of the issue a stipulation between the parties as to the questions in dispute was

entered into and the same was presented to the court case, p. 22, paragraph 6—case, p. 23, l. 22). The case was then tried upon the questions involved in the stipulation, viz., whether either or both were dependents under the act. The only provision which it is necessary to construe for the purpose of arriving at the propriety of the court's conclusions is in paragraph 12 of the Workmen's Compensation Act, as amended by Chapter 244 of the Laws of 1914. This provision begins on page 499 and reads as follows:

“The term ‘dependents’ shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or death, namely: Husband, wife, parents, step-parents, grand-parents, children, step-children, grand-children, post-humous child, illegitimate children, brothers, sisters, half brothers and half sisters. Legally adopted children shall, in every particular, be considered as natural children; provided, however, that dependency shall be presumed as to a widow who is living with her husband at the time of his decease, and children under the age of eighteen years; step-children and illegitimate children shall be presumed to be dependent when they were part of the decedent's household at the time of his death.”

It will be seen that this amended paragraph completely sets forth those who may be classed as dependents, and the glossary opposite the section states, “Dependents Defined,” and below this glossary is another, “Adopted Children.” It is important to notice that with regard to the latter glossary the Act provides, “Legally adopted children shall in every particular, be considered as natural children.” Clearly, the legis-

lature had in mind that it had not included under "Dependents Defined" legally adopted children, and for that reason made a provision fixing their status similar to that of natural children. The inference to be drawn is, that they evidenced their purpose by inserting in the Act under "Adopted Children" that these children which ordinarily would not have been covered under the section, should receive the same benefits under the Act as posthumous children, children and illegitimate children of the deceased. The Act provides for grand-children, children of the deceased and illegitimate children of the deceased who are actually dependent upon the deceased at his death. It is to be noted that children and illegitimate children are specifically mentioned, and mention is also made of posthumous children, but when we come to the provision for grand-children we find no mention of illegitimate grand-children. No doubt, the legislature had in mind that if a person, by his own wrong, was responsible for the being of a child, regardless of whether such a child was born in lawful wedlock or not, the moral duty of the parent existed. This same line of reasoning could not be applied to an *illegitimate child of a child* of the deceased. The illegitimate child without statutory enactment would obtain nothing from the estate of its parent. There is no statutory enactment permitting the illegitimate child of a child of a deceased to inherit from its mother's parents. The putative father was responsible, together with its mother, for the support of the infant child, but that liability of support could not be transferred from the child's parents, or mother in this case, to the mother's parent.

The trial court in the Determination of Facts says:

“The mere reference in the Act to illegitimate children being presumed to be dependent when they are part of the decedent’s household at the time of his death, does not necessarily exclude the claim of an illegitimate grand-child, who was a part of the decedent’s household at the time of his death, to be considered a dependent in fact under the Act.” (Case, p. 39, ll. 19-27.)

The trial court misunderstood the provisions of the Act with regard to dependent children, because the presumption of dependency referred only to a certain class who are specifically mentioned under the term “dependents.” It might well be, if an illegitimate child of a child of the deceased were actually mentioned as within the class of possible dependents, that the reasoning of the court below would be applicable, but it is to be noted that there is *no provision or mention of the illegitimate child of a child of the deceased*. In fact, there is no such legal person as an illegitimate grandchild, because as soon as the child is illegitimate it bears no relationship to its parents’ father or mother and is *nullius filius*. In addition, we think it may be stated without question, that the deceased would not have been under any duty at all to support the so-called illegitimate grandchild. It is to be further noted that this child was not adopted by the deceased. There is a legal distinction and there is a distinction in the provisions of the Compensation Act as amended in 1914, between *children of a deceased* and the children of children of the deceased. The legislature was very careful to set forth at length those who, as actual dependents of the deceased might be en-

titled to compensation according to the provisions of the act. If the legislature had intended to provide for any other class of illegitimate dependents it would have specifically mentioned them. It is our contention that the entire question may be summed up in the following words: *Whatever class is not specifically included, is specifically excluded from the benefits of the Act.* *Connors v. Pub. Service Corp.*, 89 L., p. 99. Dependency alone is not sufficient to justify an allowance of compensation. An additional factor must be taken into consideration, namely; that the person who is dependent must be one who comes within the class of possible dependents.

The trial court has attempted to carry the coverage of the Compensation Act to an unreasonable length. It is both inequitable and improper in every sense to charge the employer for compensation payments where a woman, by reason of her illegal act, has had a child and thereby is forced to give up her work and become part of her father's household. The testimony showed that previous to the birth of the child the mother was not dependent.

Q How long was it before your father's death that you earned any money yourself?

A I haven't earned any money since the baby was born (p. 26, ll. 10-13).

If the position assumed by the respondent were not approved, any unfortunate girl in the same circumstances as Anna King, could fasten upon her parent's employer the liability for 300 weeks' compensation, by merely going to her father's home after the birth of her child and taking care of the house and using some of the money which he gave her, to support her illegitimate child. Intention of the parties cannot by itself create legal dependency, for if this rule were adopted,

then a chauffeur in the deceased's employ might live with and be supported by the deceased and be dependent in every way, and thereby obtain compensation, if he be under eighteen years of age, although he is not mentioned among those who might be classed under the head of possible dependents under the Act.

Therefore, we maintain that the so-called illegitimate grandchild is not a person entitled to receive compensation in this case. If the court is to continually insert into the category of dependents one class after another whom the legislature in its wisdom has not seen fit to place in such category, the entire purpose of the legislation will be avoided. The purpose of the Act was to provide for certain relatives of the deceased and they are set forth at length in Paragraph 12 of the Act, and it is our contention that the trial court should not by judicial legislation provide for compensation for those who are not mentioned in the Act. *Hamill v. Penn. R. R. Co.*, 87 N. J. L. 388. *Connors v. Public Service R. R. Co.*, 89 L., p. 99.

As was stated in Justice Bergen's opinion in this case for the Supreme Court.

"The proofs in the case show that the daughter was not living with her father when her child was born, but that after that event she took the child to the place where her father was living; that an additional room was leased; that the father paid her \$8.50 a week for room rent and board, taking only one meal a day except Sundays, and that out of this the daughter paid the rent \$5.50, using the balance for food; that the father occasionally gave her extra money and that at the time of his death her sister boarded with her paying \$4.00 a week. This

is the only proof of assumption by the father of any responsibility for the support of the illegitimate child of his daughter and it is not sufficient to raise a presumption that he was treating such a child as a dependent even if that be sufficient under our statute, which we think it would not be" (90 L., p. 421).

This indicates that even if Margarite King were within the class of possible dependents, still the evidence failed to show that she was a dependent of John F. King at the time of the latter's death.

The reference in the appellant's brief to the decision in *Newark Paving Co. v. Klotz*, 85 L., page 433, is not applicable to the question involved in this appeal. First, because that decision construed paragraph 12 of the Compensation Act as originally passed in 1911, at which time the provision in regard to dependents was in a very crude state (*Blanz v. Erie R. R.*, 84 L. p. 35), but even the examination of the provision referred to in the Klotz case, leaves some doubt as to whether the legislature covered every possible dependent. *The 1913 amendment is made to apply to and include a designated class of persons who may be considered dependents.* This statement is taken verbatim from Justice Bergen's opinion for the Supreme Court in this case (90 L., p. 421).

The other case referred to by the appellant (*Hamill v. Penn. R. R. Co.*, 87 L. 388), militates against his own argument, for there the Court said, speaking of actual dependents, that *they mean relatives in some degree mentioned in that paragraph, etc.* This indicates that those who are not mentioned in that paragraph may not be actual dependents.

POINT II.

The reference to the British Act is of no consequence since our courts have already construed our own Act which is dissimilar to the British Act. It might be well also to state that the foreign act referred to by the appellant, defines its own use of the word dependents, and therefore cannot be considered in the construction of the paragraph upon which the appellant's case must rise or fall.

POINT III.

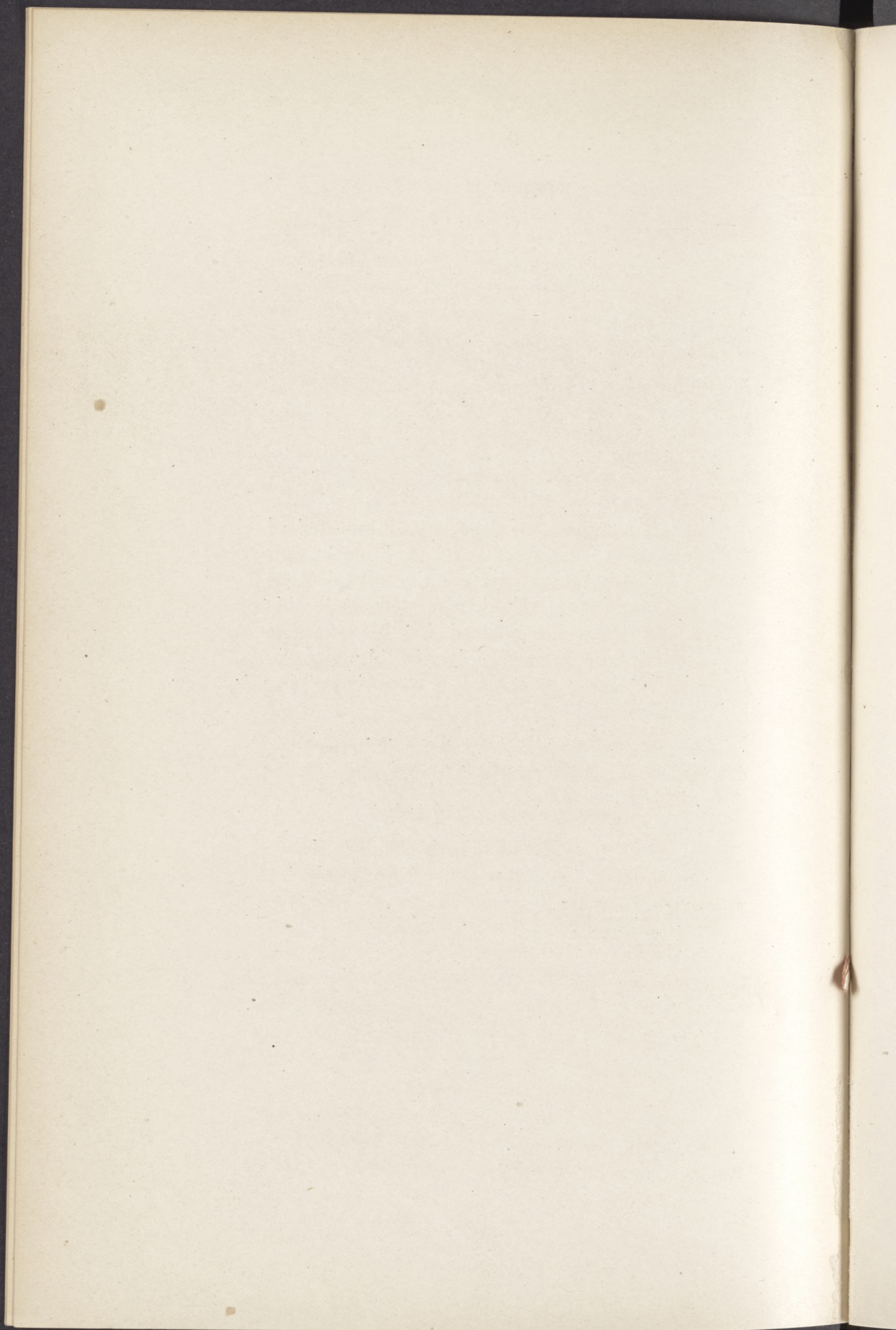
The State of the Case does not contain a final judgment upon which the Court of Appeals may pass. We assume in order for the appeal to be properly taken from the Supreme Court to this Court, the judgment entered in the Supreme Court upon the opinion therein, should appear in the State of the Case, otherwise there is nothing before this Court.

We respectfully submit, that the judgment under review should be affirmed with costs.

Respectfully submitted,

KALISCH & KALISCH,
Attorneys of Respondent.

ISIDOR KALISCH,
On the Brief.



New Jersey Court of Errors and Appeals

ANNA KING, on behalf of her- self and MARGARITE KING, <i>Appellant-Petitioner,</i>	} <i>On Appeal from New Jersey Supreme Court.</i>
<i>vs.</i>	
SPLITDORF ELECTRICAL COMPANY, a corporation, <i>Appellee-Respondent.</i>	

Brief for Appellant.

John F. King lost his life January 24, 1915, as the result of an accident which arose out of and in the course of his employment by appellee. At the time of the accident, and for three years prior thereto, his daughter, the appellant, then twenty-one years old, had been residing with him; her illegitimate daughter, Margarite King, then ten months old, resided with him since her birth, and he furnished them with a home, food and clothing.

The only question is whether the illegitimate infant, daughter of appellant, was an actual dependent of said John F. King at the time of the accident, within the meaning of the Workmen's Compensation Act, and, as such dependent, entitled to compensation under said act (Case, p. 22, paragraph 6).

I.

Laws of 1914, page 499, chapter 244, defines the term "dependents" as follows: "The term 'dependents' shall apply to and include any or all of the following who are dependent upon

the deceased at the time of accident or death, namely: husband, wife, parents, stepparents, grandparents, children, stepchildren, grandchildren, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters. Legally adopted children shall, in every particular, be considered as natural children; provided, however, that dependency shall be presumed as to a widow who was living with her husband, at the time of his decease, and children under the age of eighteen years; stepchildren and illegitimate children shall be presumed to be dependent when they were part of decedent's household at the time of his death. Every provision of this act applying to one class shall be equally applicable to the other."

Dependents as defined by this statute include parents, stepparents, grandparents, children, stepchildren, grandchildren, and illegitimate children, and it provides that "Every provision of this act applying to one class shall be equally applicable to the other." A reasonable construction of this proviso would be that children, whether legitimate or illegitimate, whether of the whole blood or half blood, are included within the term dependents, and that grandchildren, whether legitimate or illegitimate, are also included within the term dependents as above defined.

In common parlance, grandchildren are children of children, or a son's or daughter's child; a man's nearest blood relation after his own children—persons of the second descent, etc.

20 Cyc. 1289.

"The word 'children' may well be held to include dependent stepchildren."

Newark Paving Co. v. Klotz, 85 N. J. L. 433 (affirmed 92 Atl. 1086).

By parity of reasoning the word "grandchildren" may well be held to include dependent illegitimate grandchildren.

"Actual dependents" and "who are dependent upon the deceased" as used in paragraph 12 of the act as amended (P. L. 1913, p. 305) mean relatives in some degree mentioned in that paragraph, who were being wholly or to a substantial degree supported by the deceased at the time of his death.

Hammill v. Pennsylvania R. Co., 87 N. J. L. 388.

II.

The British Workmen's Compensation Act removes the doubt as to the right of an illegitimate child to recover compensation for the death of its grandparent, by defining dependents as follows: "Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparents so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively.

6 Edw. VII, C 58, Sec. 10.

"English authorities, while they cannot be considered on constitutional questions, are of value on questions of construction in cases of similarity between the English act and the statute under consideration."

Cyc—Corpus Juris System, p. 41.

The English statute *supra* has provided for just such a case as the one under consideration, and our statute above quoted has gone to great length in enumerating the class of persons entitled to the benefits of the act. It seems to be the intention of the framers of our statute to include within the class of those termed as dependents all relatives within the second degree or the same relative degree by marriage or adoption, and as evidence of the degree of care taken by the legislature to prevent the omission of any of these classes, the proviso was enacted that "Every provision of this act applying to one class shall be equally applicable to the other." While the statute above quoted does not specifically provide that illegitimate grandchildren come within the meaning of the act, still in view of the foregoing proviso it seems that it is the undoubted intention of the legislature to include this class of dependents within the benefits of the act.

III.

It is therefore respectfully submitted that the judgment of the Supreme Court should be reversed and the judgment of the Court of Common Pleas affirmed on the ground that the illegitimate infant daughter of appellant-petitioner was an actual dependent of said John F. King, father of appellant, at the time of his death, within the meaning of the Workmen's Compensation Act, and as such actual dependent entitled to the compensation allowed by said act.

WILLIAM P. MURPHY,
Attorney for Appellant.

