

INDEX

	Page
Writ of Certiorari.....	1
Return	3
Claim Petition for Compensation.....	4
Respondent's Answer	9
Order	13
Stipulation	15

TESTIMONY FOR PETITIONER

Emanuel Dreyfus,	
direct examination	16
cross "	18

TESTIMONY FOR RESPONDENT

Joseph Pfeiffer,	
direct examination	20
cross "	22
re-direct "	23
John Kessler,	
direct examination	24
cross "	26
re-direct "	27
Certificate of Stenographer	28
Certificate of Deputy Commissioner.....	28
Determination	29
Order for Hearing on Appeal.....	31
Reversal	32
Notice of Appeal	34
Reasons	35
Opinion of Supreme Court.....	37
Rule of Affirmance and Remittitur.....	41
(Entitled Rule for Judgment)	
Notice of Appeal and Grounds of Appeal.....	42

1000

WRIT OF CERTIORARI

NEW JERSEY, SS :

The State of New Jersey to the Court
(SEAL) of Common Pleas in and for the County of Hudson, and John J. McGovern, Clerk of the said Court, and Emanuel Dreyfus, 10

GREETING :

We being willing for certain reasons to be certified of and concerning a certain order (or determination) and judgment rendered on the 11th day of April, 1927, by the Honorable Charles M. Egan, one of the Judges of the said Court of Common Pleas in and for the County of Hudson in a certain proceeding brought on behalf of Emanuel Dreyfus, petitioner against Lutz & Company, respondent, for the determination and recovery of compensation under the Act of the Legislature of the State of New Jersey, 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, which said order (or determination) and judgment were rendered on appeal from an order theretofore made by the Workmen's Compensation Bureau dismissing the petition of said Emanuel Dreyfus, we command you the said Court of Common Pleas in and for the County of Hudson, and John J. McGovern, Clerk of said Court, that the said order (or determination) and judgment, together with a transcript of the record and all proceedings for 20 30 40

Writ of Certiorari

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 the Supreme Court of New Jersey at Trenton, on the 28th day of July inst, that therein may be caused to be done what of right and according to law ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this 11th day of July, nineteen hundred and twenty-seven.

EDWARD J. KELLEHER,
Clerk.

KELLOGG & CHANCE,
Attorneys.

This Writ is allowed, let it be sealed. July 8, 1927.

JAMES F. MINTURN,
Justice of Supreme Court.

We hereby consent to the allowance of the within Writ.

LITTAUER & HERZFELD,
Attorneys of Emanuel Dreyfus.

Filed, Clerk's Office
July 12th, 1927
Hudson County, N. J.

JOHN J. MCGOVERN,
Clerk.

Return

RETURN

Filed, 1927

The answer of Charles M. Egan, Judge of the Court of Common Pleas in and for the said County of Hudson, and John J. McGovern, Clerk of said County and within named, the record and proceedings of the Plaint whereof mention is within made, with all things touching the same. We certify and send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained in a certain schedule to this writ annexed as within we are commanded. 10

CHARLES M. EGAN,

By Robert V. Kinkead,
Judge. 20

Attest:

JOHN J. MCGOVERN,
Clerk.

30

40

Claim Petition for Compensation

RETURN

Filed, July, 1927.

NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU
 10 TRENTON, N. J.

EMPLOYEE'S CLAIM PETITION FOR
COMPENSATION

EMANUEL DREYFUS,	<i>Petitioner,</i>	}	<i>Received at</i>
<i>vs.</i>			<i>Trenton.</i>
20 LUTZ Co., a corporation,	<i>Respondent.</i>	}	<i>Claim Petition</i>
			<i>No.</i>
			<i>Petition</i>
			<i>Prepared</i>
			<i>October</i>
			<i>6, 1926.</i>

Attorneys for Petitioners, Weitz & Herzfeld, Dispatch Bldg., Union City, N. J.

To the Workmen's Compensation Bureau of New Jersey:

The Claimant respectfully alleges the following facts:

- 30
1. What is your name? Emanuel Dreyfus.
 2. Where do you live? 13 26th Street, Guttenberg, New Jersey.
 3. Sex. Male.
 4. Age. 22 years.
 5. Married? Single.
 6. By whom were you employed at the time of the accident? (Give name and business address.) Lutz Co., 57 27th St., Guttenberg, New Jersey.
 - 40 7. What was the business of your employer? Woodworking factory.

Claim Petition for Compensation

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.

9. Did you receive such notice from your employer? No.

10. Did your employer have knowledge of your accident? Yes. 10

11. Did you notify your employer of your accident? Yes.

12. If so, on what date? August 13th, 1926.

13. Have you made claim to your employer for compensation? Yes.

14. What was your regular occupation, and what kind of work were you doing at the time of the accident? General shop hand around factory and was cutting strips on circular saw machine.

15. When did the accident happen: August 13th, 1926, about 4:30 P. M. 20

16. Where did the accident happen? In shop of Respondent.

17. What was the nature of the accident, and how did it happen? I was shortening strips which are used to put between scales when same are put on steam pipes to dry.

18. On what date were you compelled to stop work because of the injury? August 13th, 1926.

19. On what date were you well enough to work again? Am not well yet. 30

20. If still disabled, on what date do you think you will be able to work? About October 11th, 1926.

21. Give nature of any injury from which you will recover.

22. If any permanent injury resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. My index finger on the left hand has been amputated at the second joint and I have permanent scars on 40

Claim Petition for Compensation

my left thumb and second, third and fourth fingers, and have not fully regained the use of the motion of same.

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
10 per hour. 40c. per hour.
26. Give number of hours in an ordinary working day. $8\frac{3}{4}$ hours.
27. Give number of days in an ordinary working week. 6 days.
28. State the amount of weekly wages. \$19.20.
29. How much money have you received from your employer as compensation (Not medical aid) since your accident? Nothing.
30. Has your employer promised to pay you any
20 compensation? No.
31. If so, how much?
32. Was medical aid required? Yes.
33. Did you receive medical, surgical or hospital service? Yes.
34. Did you request your employer to furnish these services? Yes.
35. Were they furnished? Yes.
36. If so, between what dates? Between Aug. 13th, 1926 and about Sept. 24, 1926.
- 30 37. If not, what sum did you expend for medical, surgical or hospital service?
38. 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.
- 40 Your Petitioner therefore prays that your Honorable Bureau will determine the amount of compensation due to your petitioner from the said de-

Claim Petition for Compensation

fendant, 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. 10

And your petitioner will ever pray, etc.

EMANUEL DREYFUS,
13 26th St., Guttenberg, N. J.

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

Emanuel Dreyfus of full age, being duly sworn according to law, on his oath deposes and says: that he is the petitioner named in the foregoing petition; and that he 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.

EMANUEL DREYFUS. 30

Subscribed and sworn to before me
this 6th day of October, 1926,
at Union City, N. J.

MERVIN HERZFELD,
An Attorney at Law of N. J.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.) 40

Claim Petition for Compensation

TO THE RESPONDENT

The foregoing claim petition has been presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act.

10

We hereby notify you that unless an answer shall within ten days after the service of this notice, be filed in duplicate with the Secretary of the Bureau, in the State House at Trenton, the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the petitioner to prove such facts.

WORKMEN'S COMPENSATION BUREAU,

Secretary.

20

I, William 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.

(Filed, Clerk's Office, Hudson County, N. J., Jan. 27, 1927. John J. McGovern, Clerk.)

30

40

Respondent's Answer

NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU
 TRENTON, N. J.

RESPONDENT'S ANSWER TO EMPLOYEE'S
 CLAIM PETITION

10

EMANUEL DREYFUS, . <i>vs.</i> LUTZ Co., a corporation,	<i>Petitioner,</i> <i>Respondent.</i>	<i>Claim Petition No. 5816. October 25, 1926.</i>
---	--	---

Attorney for Respondent, Richard W. Baker, 175
 W. State St., Trenton, N. J.

20

In answer to Claim Petition filed in this cause:

1. What is the petitioner's name?
2. Where does he reside?
6. Was the petitioner in your employ at the time of the accident? No.
7. State your business? Tool makers.
8. Did you receive written notice from the Petitioner at the time of hiring, or later, that the Compensation Law was not to apply to him? No.
9. Did you give such notice to him? No.
10. When did you first have knowledge of this accident? 8-13-26.
11. Did you receive notice of this accident from the Petitioner?
12. If so, on what date?
13. Has any claim for compensation been made? Yes.
14. What was the Petitioner's regular occupa-

40

Respondent's Answer

tion, and what kind of work was he doing at the time of the accident? Regular occupation, helper.

15. When did the accident happen? 8-13-26.

16. Where did the accident happen? Company's plant.

10 17. What was the nature of the accident, and how did it happen? While operating a cross-cut saw petitioner injured his fingers.

18. On what date was the petitioner compelled to stop work because of the injury? 8-13-26.

19. On what day was the injured well enough to work again? Don't know.

20. If still disabled, on what date do you estimate he will be able to work?

21. Give your understanding of the nature of any injury from which he should recover? Injury to fingers.

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? Explain fully. Probably some permanent disability.

23. Were the wages fixed by piece-work?

24. If so, what was the average weekly wage of the injured?

30 25. If wages were fixed by the hour, state rate per hour?

26. Give number of hours in an ordinary working day.

27. Give number of days in an ordinary working week.

28. State the amount of weekly wages. \$19.20.

29. How much money have you paid the injured as compensation (not including medical aid) since the accident? None.

40 30. Have you promised to pay compensation? No.

31. If so, how much?

Respondent's Answer

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? No.

36. If so, between what dates?

37. If not, give reason for failure to do so. Not a compensation case. 10

38. Give name of physicial and hospital rendering service at your direction.

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 denies that the petitioner suffered an injury by accident arising out of and in the course of his employment. 20

THE LUTZ COMPANY,
Guttenberg, N. J.

30

40

Respondent's Answer

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

10 Richard W. Baker, of full age, being duly sworn according to law, on his oath deposes and says: that he is the Attorney for the respondent named in the foregoing answer to claim petition; that he 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.

RICHARD W. BAKER.

20 Subscribed and sworn to before me
 this 26th day of October, 1926, at
 Trenton, N. J.

M. M. MEREDITH,
 (SEAL) *Notary Public of N. J.*

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

30 I, William 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.

(Filed, Clerk's Office, Hudson County, Jan. 27, 1927. John J. McGovern, Clerk.)

Order

Hudson County Court of Common Pleas

EMANUEL DREYFUS, <i>Petitioner-Appellant,</i> <i>vs.</i> LUTZ Co., a corporation, <i>Respondent-Appellee.</i>	}	<i>Upon</i> <i>Petition, etc.</i>	10
		<i>Order.</i>	

It appearing to the Court that the time for filing the transcript of the record and testimony in the above named appeal, will expire on January 11th, 1927, and,

It further appearing to the Court that said transcript of testimony and record cannot be procured within said time, it is on this 7th day of January, 1927, ORDERED, that the time for filing said transcript of testimony and record be and hereby is extended until January 31st, 1927. 20

CHARLES M. EGAN,
Judge.

(Filed, Clerk's Office, Hudson County, Jan. 7, 1927. John J. McGovern, Clerk.) 30

Order

NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU
 JERSEY CITY

HUDSON COUNTY DISTRICT

10

EMANUEL DREYFUS, <i>Petitioner,</i>	}
<i>vs.</i> LUTZ Co., a corporation, <i>Respondent.</i>	}

20

Transcript of stenographer's notes of testimony taken in the above entitled matter before Hon. Charles E. Corbin, Deputy Compensation Commissioner at the Dept. of Labor Bldg., 571 Jersey Ave., Jersey City.

(Filed, Clerk's Office, Hudson County, Jan. 25, 1927. John J. McGovern, Clerk.)

30

40

Stipulation

NEW JERSEY DEPARTMENT OF LABOR
 WORKMEN'S COMPENSATION BUREAU
 JERSEY CITY

HUDSON COUNTY DISTRICT

EMANUEL DREYFUS, <div style="text-align: right;"><i>Petitioner,</i></div> <div style="text-align: center;"><i>vs.</i></div> LUTZ Co., a corporation, <div style="text-align: right;"><i>Respondent.</i></div>	}	10
---	---	----

Transcript of stenographic notes of testimony taken in the above entitled matter before Hon. Charles E. Corbin, Deputy Compensation Commissioner at the Department of Labor Building, 571 Jersey Avenue, Jersey City, New Jersey on the 10th day of December, A. D., 1926, at 3:30 P. M. in the afternoon.

20

Appearances:

Mervin Herzfeld, Esq. (Weitz & Herzfeld, Esqs.) for the Petitioner.

T. C. Jamieson, Esq., for the Respondent.

Mr. Herzfeld. We have agreed in the event of an award there will be a total loss of the left first finger and five per cent of the left second finger and ten of the left third finger, totalling 37½ weeks. His salary was \$19.20.

30

The Court. How about temporary?

Mr. Herzfeld. Temporary we agreed on as six weeks, \$76.80.

Mr. Jamieson. We agreed on six weeks, but don't agree on the amount of money. There is one week taken out.

40

Emanuel Dreyfus, direct

The Court. Then you agree on temporary at five weeks at the rate of \$12.80.

EMANUEL DREYFUS, the Petitioner, sworn.

Direct examination by Mr. Herzfeld.

- 10 Q Where do you live, Mr. Dreyfus?
 A 13 26th Street, Guttenberg.
 Q Were you working for the Lutz Company?
 A Yes, sir.
 Q During what period, commencing when?
 A From the 24th of July until the day of the accident, August 13th.
 Q When you first worked for the Lutz Company what were your duties?
 A My duties were practically handy man, working
 20 ing around different machines in the factory.
 Q When you first started with the Lutz Company in July?
 A When I first started I was working in the office for a period of two weeks.
 Q After that two weeks' period had elapsed, did you have any new duty?
 A Yes, sir; I was transferred up into the factory.
 Q What were your duties there?
 30 A Well, handy man, working on the machines.
 Q You were a handy man around there?
 A Yes, sir, utility man.
 Q On the day of the accident, August 13th, what were you doing?
 A On the day of the accident I was piling scales.
 Q What do you mean, draftsman scales?
 A Draftsman scales, and I ran short of these ventilating strips and I asked the foreman where I
 40 could get any more being I didn't have any more and he said I could get them in the yard, he showed

Emanuel Dreyfus, direct

me where they were and I went out in the yard and picked up an armful, they were all too long to use.

Q What were these ventilating strips used for?

A They were used in between the triangle scales.

Q You went out in the yard and got these strips, what did you do with the strips?

A I came back then and they were too long and I went to the circular saw to cut them practically in half, being I thought to do them that way would be in the best interest of the company. 10

Q As you were using the circular saw what happened?

A I was under the impression someone called me and as I quickly turned around I caught my hand in the machine.

The Court. The machine was a saw? 20

A A circular saw.

Q As the result of that you sustained the injury you possess there?

A Yes, sir.

Q Now, Mr. Dreyfus, were you ever told by anybody on behalf of the Lutz Company not to use this circular saw?

A No; I was not.

Q Had you worked on any other machines in the plant? 30

A I was working on every machine.

Q You were the general utility man around there, and that was part of your work?

A My work.

Mr. Jamieson. You ask that as another question, whether it was part of his work.

Mr. Herzfeld. No, I was just finishing it up.

Mr. Jamieson. I object to his answer.

Mr. Herzfeld. I will consent to have it stricken out, that's all. 40

Emanuel Dreyfus, cross

Cross examination by Mr. Jamieson.

Q Mr. Dreyfus, you were handy man around the shop?

A Correct.

Q How often did you use any machines.

A Any machine? Well, I don't know, any machine, it is a pretty broad statement, I was on different machines.

Q You were only there a week or so?

A Two weeks, thirteen days to be exact, in the factory.

Q Can't you give some idea as to how often you used any machine around there?

A Why, the joiner, I should say I was on the joiner a period of a few hours and the planer about the same length of time.

Q Did you ever use the circular saw before the day you were hurt?

A Yes, once before.

Q Whenever you used the joiner or planer it was set up for you by the foreman, wasn't it?

A Yes.

Q You say you spoke to the foreman and he told you to go out and get some pieces of wood?

A Yes.

Q To come back and put between the scales?

A He didn't say to come back and put between the scales, I knew they had to be put between the scales.

Q He didn't say anything about cutting the pieces of wood, did he?

A No.

Q How long was the piece of wood you were cutting when you were hurt?

A That, I really don't remember.

Q How long a piece of wood did you usually use to put between these scales?

Emanuel Dreyfus, cross

A I should judge about two feet. Between two and three feet in length.

Q Between two and three feet in length?

A I imagine so.

Q You usually used that size, didn't you?

A Yes, about that.

Q You didn't remember how long the piece of wood you were cutting was? 10

A No, sir; I do not.

Q Do you remember whether it was more or less than two or three feet?

A Well, I imagine it was less than three feet.

Q Less than three feet?

A Less than three feet.

Mr. Jamieson. That's all.

Mr. Herzfeld. That's all, that's our case, your Honor. 20

Mr. Jamieson. I move to have the petition dismissed at this time on the ground that this man was doing a job at this time he was injured which was altogether out of the course of his duties. His duties was handy man around there and his duties on this particular job were to get strips of wood and put them between the scales. He testified that the pieces of wood he usually put between those scales were two or three feet long and he testified before, the wood he was cutting was less than that. It is our contention in this case that the cutting of this piece of wood was in no way necessary to his work and was merely amusement or an adventure on his part to cut the piece of wood to see how the machine worked. 30

The Court. I will deny your motion at this time.

Mr. Jamieson. I ask an exception. 40

Joseph Pfeiffer, direct

RESPONDENT'S CASE

JOSEPH PFEIFFER, a witness on behalf of the Respondent, sworn.

Direct examination by Mr. Jamieson.

10 Q Mr. Pfeiffer, you are foreman of the shop in which Mr. Dreyfus was employed by the Lutz Company?

A I am foreman over the machine part of it, woodworking machinery.

Q That is where he was employed?

A That is where I employed him.

Q His duties around there were as handy man?

A Yes, sir.

20 Q Some of those duties were carrying things to men while they were putting them on the machine or get them as they came off the machine and occasionally run the planer or joiner that you set up for him?

A That's right, any machine I put him on I first showed him how to do it.

Q You never knew that he used the cross-cut saw?

30 A I never put him on it. Of course, it would be natural to say if one of our cabinet makers today went up there and used the saw I wouldn't know it now because I am down here.

Q Did you see the piece of wood that was in this machine that Dreyfuss was injured on immediately after he was injured?

A Yes, sir.

Q That was a piece of wood which I understand was one-sixteenth of an inch in width, in thickness rather.

A In thickness.

40 Q And one and a quarter inches in width?

A Yes, sir.

Joseph Pfeiffer, direct

Q And about eighteen inches long?

A Eighteen or eighteen and a half, I couldn't tell you.

Q A piece of wood of that description could be used as it was to be put between the scales, couldn't it?

Mr. Herzfeld. I object to that, it is calling for a question of discretion on this man's part whether he used a larger piece of wood or a smaller piece of wood. 10

(Further discussion.)

Q Which way was the piece of wood being cut on the machine at the time Mr. Dreyfus was injured, on the end or lengthwise?

A Lengthwise.

Q Would that be of any advantage in putting it between the strips? 20

Mr. Herzfeld. I object to that question, how can he testify to that?

The Court. He can testify, he is a mechanic, he can testify as to his opinion whether it could be used that way.

Q Answer the question.

A That piece of wood could have been used, yes, but he wanted to make two out of it. 30

Mr. Herzfeld. I object to what he wanted to do.

Q If one wanted to break a piece of wood the description that you saw in the machine into smaller pieces it is very easy to break it with your hands, is that right?

Mr. Herzfeld. I object, if the Court please, the question is leading and calls for a conclusion on the part of the witness as a witness, and still violates that rule that it is just mere- 40

Joseph Pfeiffer, cross

ly an exercise of judgment on the part of the petitioner.

The Court. You are leading the witness.

Q Is it necessary to use a saw to divide a piece of wood of the character you have described, into more than one piece?

10 A Not free handed.

Q It can be broken or it cannot be broken with your hand?

A It can be broken both ways, lengthwise and crosswise, it can be broken.

Mr. Jamieson. That's all.

Cross examination by Mr. Herzfeld.

Q Mr. Pfeiffer did you ever tell Mr. Dreyfus that he should never use this cross saw machine?

20 A Yes I did tell him.

Q You did tell him and yet Mr. Dreyfus's job around the place was handy man, is that right?

A Only for what machinery I set him up on.

Q Did he have the full run of the place there?

A What do you mean the full run?

Q He went from place to place, doing odd jobs around?

A Went where I placed him.

30 Q Where had you placed him on this particular day?

A On this particular day, we had scales, what we call draftsman's rulers.

Q You placed him for the purpose of placing those rulers on a drying machine?

A No drying machine, steam pipes.

Q In order to dry those rulers properly it is necessary to put some layer of some material under them?

40 A Yes, sir.

Q Then you—

Joseph Pfeiffer, re-direct

A You lay a stick between them and lay another and then another stick.

Q It is necessary to do this job you have these boards to put in between?

A First the lumber is green it has got to be dried.

Q That is what Mr. Dreyfus was doing at the time? 10

A Yes, sir.

Q He had used quite a number of machines in this place?

A Yes, sir; he used the joiner, the first day, I set it and showed him how to use it, showed him how to round the corners on a piece of wood, on a double disc center.

Q You never said he shouldn't use this machine or shouldn't do that, did you? 20

Mr. Jamieson. I object to the question, it is too general.

The Court. You are leading.

Mr. Herzfeld. That's all.

Re-direct examination by Mr. Jamieson.

Q Mr. Pfeiffer, there was an unlimited amount of these strips of wood out in the yard, was there, you had some amount of them out there? 30

A There is quite a quantity out there, always, for starting fires in the morning, for our boiler.

Q All that are necessary for this job?

A Thick ones, thin ones, all kinds out there.

John Kessler, direct

JOHN KESSLER, a witness on behalf of the Respondent, sworn.

Direct examination by Mr. Jamieson.

Q Mr. Kessler, you are employed by the Lutz Company?

10 A Right.

Q What is your duty there?

A Working on all the machines, general wood-worker.

Q You have had a number of years' experience operating machines?

A Yes, sir; quite a number.

Q Most of the men in the shop where you work have a number of years' experience operating these machines?

20 A Yes.

Mr. Hersfeld. I object as immaterial.

Q Did you ever see anyone operate the cross-cut machine in your plant except one of these experienced men, been there for years?

Mr. Hersfeld. I object, if the Court please, it is immaterial.

The Court. How is that relevant and material?

30 *Mr. Jamieson.* Well, if no one but an experienced man is allowed to use that machine, if he was there he should know that. The only machines he used were the simpler ones that were set up for him.

The Court. Sustain the objection.

Q Did you see the piece of wood in the machine after you saw that Dreyfus had hurt his hand?

A Yes, I seen that.

40 Q Could you describe that piece of wood to us?

John Kessler, direct

A That could have been about eighteen inches long.

Q About eighteen inches long?

A Yes.

Q About how thick was it?

A Thickness about a quarter inch.

Q About how wide?

10

A An inch and a half wide, an inch and a quarter wide.

Q You, as an experienced man in that shop, if you wanted to divide a piece of wood such as you just described, into many parts, would you use a machine?

Mr. Herzfeld. I object, if the Court please, on the ground the question is leading and calls for a conclusion.

20

The Court. Objection sustained, you may ask him if it would be necessary to use the machine.

Q Would it be necessary to use a machine to break that kind of a piece of wood as you described, do you think it would?

A Yes, sir.

Q Do you mean that it would be necessary for you to use it or do you mean it would be necessary for anyone to use it?

30

Mr. Herzfeld. I object, this is his own witness.

The Court. I will allow the question.

Q Do you mean it would be hard for you to break that way or hard for anyone to break it?

A Not hard for me to break it, but an inexperienced man.

Q An inexperienced man.

A Not break it, I mean cut it.

40

Q I mean break it.

John Kessler, cross

A Oh, I meant cut it.

Q You didn't understand my question?

A No.

Q You think it would be hard for anyone to break it?

A No.

10 Q The date of this accident, August 13th, 1926, you had left your machine for a few minutes?

A That's right.

Q And when you came back you found Dreyfus there, injured?

A Yes, he had cut his hand.

Q Had you ever seen Dreyfus use the machine before?

20 A Not this particular machine, but he worked on other machines.

Mr. Jamieson. That's all.

Cross examination by Mr. Herzfeld.

Q You say that you never saw Mr. Dreyfus use that particular machine before?

A Not this one.

Q As a matter of fact, didn't you show him how to use that particular machine three or four days before the accident?

30 A Not use it, he wanted to cut that himself.

Q Didn't you show him how to use it?

Mr. Jamieson. I object to the question, he said he didn't use it.

The Court. Allow the question.

Q Didn't you show Mr. Dreyfus how to use the machine two or three days before the accident?

A I don't remember that, that is not showing him.

40 Q Were you at the machine together with Mr. Dreyfus, showing him how to cut a piece of wood?

John Kessler, re-direct

A Yes, sir.

Q That was three or four days before the accident?

A Yes, about that.

Q What was your purpose in showing him that?

A I guess he wanted to find out how to work it.

Q And you showed him how to do it? 10

A Yes.

Q Did he, himself, put the piece of wood through?

A Yes, just one piece.

Q So you did see him use that machine?

A Yes, sir; that was a wide piece.

Mr. Herzfeld. That's all.

Re-direct examination by Mr. Jamieson.

Q At the time you saw him he used it—with- 20
draw the question.

At the time you showed him how to use the machine, what was he doing?

A That I don't remember.

Q Did he ask you to show him?

A No, he didn't ask me.

Q You called him and said, "Do you want to see how it works," or something to that effect?

A I said the proper way is to cut it this way.

Mr. Jamieson. That's all. 30

Mr. Hersfeld. That's all.

Mr. Jamieson. That is my case.

The Court. From the evidence in this case, and I must be controlled by the evidence as presented to me, I can't understand why this boy was cutting those strips, it seems to be unnecessary to cut them. He hadn't been told to fit these strips, they were simply strips to be laid on a steamer, in order to put the triangles 40
on top of them to dry. The strips didn't ap-

Certificate of Stenographer

10 pear to be too long and he states that he was cutting them off. States how long they should be, and then Mr. Kessler states when he saw the strip it was being cut lengthwise and it was too short already. The law in this state is than an accident arises out of and in the course of the employment when the man received an accident from the work that he is doing that he is supposed to do. I would refer you to the case of Smith *vs.* Corson, where this man was told not to go out on a scaffold and he did go out and he was injured and the law stated there he was outside of his employment because he was doing something he was not supposed to do. In this case here it is entirely a fact case, a question of proof and the facts as presented to me, I can't see any reason why this boy was cutting this wood and I am therefore going to dismiss the case because I believe he was outside of his employment.

Mr. Herzfeld. I ask an exception.

I hereby certify that the foregoing is a true and accurate transcript of the above entitled matter as taken stenographically by me at the time, place and date hereinbefore set forth.

30

WILLIAM C. O'BRIEN,
Court Reporter.

I hereby certify that the foregoing is a true and accurate transcript of the above entitled matter as taken stenographically before me at the time, place and date hereinbefore set forth.

CHARLES E. CORBIN,
Deputy Compensation Commissioner.

40

Determination

I, W. E. Stubbs, Secretary of the New Jersey Workmen's Compensation Bureau, hereby attest the authenticity of the signature of Charles E. Corbin and that he, as the official who heard this case, is the proper one to certify as to the transcript of the testimony.

(SEAL)

W. E. STUBBS. 10

DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION BUREAU

EMANUEL DREYFUS,

*Petitioner,**vs.*

LUTZ Co., a corporation,

*Respondent.**Claim**Petition**No. 5816.**Determination.*

20

A formal petition having been filed in the above matter asking for compensation under the terms of the Workmen's Compensation Act of this state and an answer having been duly filed by the Respondent; the same came on for a Formal Hearing before me in Jersey City on the 10th day of December, 1926. The permanent and temporary disability was stipulated and agreed upon by both parties to the action.

30

At the hearing Mr. Dreyfus testified in his own behalf but did not call any other witnesses to corroborate his testimony. Mr. Dreyfus testified that in his regular duties as a general shop hand helper in a factory he had to use strips of wood two or three feet long to place by the scales while they dried. Strips of wood were provided him of this length for this purpose. Mr. Dreyfus testified that

40

Determination

on August 13th, 1926, on returning from the yard with some of these strips of wood he stopped at a cross-cut machine and in cutting a piece of wood less than two feet long, about 1 $\frac{1}{4}$ inches wide and about $\frac{1}{4}$ inch thick, he injured his hand.

10 On behalf of the Respondent, Mr. Joseph Pfeiffer who was employed as a foreman by the Respondent Company and John Kessler, an employee of the Respondent testified. Both witnesses testified that the piece of wood that Mr. Dreyfus was cutting at the time he was injured was eighteen inches long and that cutting the wood was in no way necessary or useful for the job that Mr. Dreyfus was to do with it.

20 Accordingly, I find from a reponderance of the testimony that the Petitioner failed to sustain the burden of proof that he sustained an injury by accident arising out of and in the course of his employment in that the petitioner deviated from his regular employment doing an act which was utterly unnecessary and useless for the accomplishment of his duties. The Petitioner is therefore not entitled to any compensation.

Accordingly, the case is hereby dismissed without cost to either party.

30 Dated, Dec. 21-26. CHARLES E. CORBIN,
Deputy Commissioner.

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

W. E. STUBBS.

40 (Filed, Clerk's Office, Hudson County, Jan. 27, 1927. John J. McGovern, Clerk.)

*Hearing on Appeal*HUDSON COUNTY COURT OF
COMMON PLEAS

EMANUEL DREYFUS, <i>Petitioner-Appellant,</i> <i>vs.</i> LUTZ Co., a corporation, <i>Respondent.</i>	}	<i>On Appeal.</i> <i>Order Fixing</i> <i>Time and</i> <i>Place for</i> <i>Hearing.</i>	10
--	---	--	----

Upon application of Carl Weitz, attorney for the above named petitioner-appellant, it is on this 27th day of January, A. D., 1927, ORDERED, that the appeal in the above entitled cause shall be heard at and in the Hudson County Court of Common Pleas, at the Court House, Jersey City, Hudson County, New Jersey, before such Judge or Justice who shall then be holding said Court, on Friday, February 25th, 1927, at 10 o'clock in the forenoon.

ROBERT V. KINKEAD,
Judge.

(Filed, Clerk's Office, Hudson County, Jan. 31, 1927. John J. McGovern, Clerk.)

30

40

Reversal

HUDSON COUNTY COURT OF
COMMON PLEAS

10	EMANUEL DREYFUS, <i>Petitioner-Appellant,</i> <i>vs.</i> LUTZ Co., a corporation, <i>Respondent-Appellee.</i>	} <i>On Appeal.</i> } <i>Order.</i>
----	---	--

Whereas, Emanuel Dreyfus was employed by the Lutz Co., a corporation, respondent in the above matter, and on August 13th, 1926, while in the employ of the respondent, was injured in an accident arising out of and in the course of his employment.

20 And an Order having been made by the Workmen's Compensation Bureau, dismissing said claim petition, on the ground that the accident was outside of the employment of petitioner, appellant, from which Order an appeal was duly taken by the appellant, to this Court.

30 And the said appeal having come on to be heard in the presence of counsel for the respective parties, and the Court having duly considered the facts and arguments of counsel submitted thereon, and being of the opinion that the injury complained of by petitioner, was caused by an accident arising out of and in the course of his employment.

40 It is on this 11th day of April, 1927, ORDERED, that the Lutz Co., a corporation, respondent-appellee, pay or cause to be paid to the petitioner, the sum of four hundred and eighty (\$480.00) dollars, being permanent disability for thirty-seven and one-half (37½) weeks, at twelve dollars and eighty cents (\$12.80) per week, which sum is to be paid in a lump sum; that the said Lutz Co., a corpora-

Reversal

tion, respondent-appellee, pay or cause to be paid to the petitioner the sum of sixty-four (\$64.00) dollars, being temporary disability for five (5) weeks, at the rate of twelve dollars and eighty cents (\$12.80) per week, which sum is to be paid in a lump sum;

That said respondent pay or cause to be paid Littauer & Herzfeld, Esqs., attorneys for the petitioner, the sum of one hundred and fifty dollars, in a lump sum immediately as and for the reasonable value of the services rendered to the petitioner, including the services rendered before the Workmen's Compensation Bureau, and on an appeal to this Court; that the respondent pay or cause to be paid to Littauer & Herzfeld, Esqs., attorneys as aforesaid, costs incurred by the petitioner in the proceedings before the Workmen's Compensation Bureau, and also the costs incurred on this appeal.

CHARLES M. EGAN,
Judge.

(Filed, Clerk's Office, Hudson County, April 11, 1927. John J. McGovern, Clerk.)

30

40

*Notice of Appeal*HUDSON COUNTY COURT OF
COMMON PLEAS

10	EMANUEL DREYFUS, <i>Petitioner-Appellant,</i> <i>vs.</i> LUTZ Co., a corporation, <i>Respondent-Appellee.</i>	}	<i>Upon Petition, etc. Notice of Appeal.</i>
----	---	---	--

To Lutz Co., a corporation, or Richard W. Baker,
its Attorney:

Sir:

20 Take Notice that the petitioner, Emanuel Dreyfus hereby appeals to the Court of Common Pleas of Hudson County, New Jersey, from the determination of facts and rule for judgment of dismissal of Charles E. Corbin, Esq., Deputy Commissioner of Labor of New Jersey, rendered in the above stated action on the 10th day of December, 1926.

WEITZ & HERZFELD,
Attorneys for Petitioner-Appellant.

30 (Service of a copy of the within notice of appeal is hereby acknowledged this 23rd day of December, 1926.)

RICHARD W. BAKER,
Attorney for Respondent-Appellee.

(Filed, Clerk's Office, Hudson County, Dec. 27, 1926. John J. McGovern, Clerk.)

Reasons

NEW JERSEY SUPREME COURT

Filed July 21, 1927.

LUTZ Co., a corporation,
Plaintiff in Certiorari,
vs.
 EMANUEL DREYFUS,
Defendant in Certiorari.

On Certiorari. 10*Reasons.*

The plaintiff in certiorari presents the following reasons for setting aside the order (or determination) and judgment brought before this Court by the writ of certiorari in the above entitled cause.

20

1. Because the said order (or determination) does not state in detail the scope of the employment of the petitioner Emanuel Dreyfus, and does not state in detail the nature of the accident, but merely states the judge's conclusion that the injury was by accident arising out of and in the course of the employment of said Emanuel Dreyfus, so that said judgment is not supported by specific findings of facts which may be submitted to and considered by a court of review.

30

2. Because the determination of the Judge of the Hudson County Court of Common Pleas is unsupported by legal evidence.

3. Because under the evidence in this case it appears that at the time of the happening of the accident in question the petitioner was acting outside of the scope of his employment, and the accident which occurred to him did not arise out of his employment.

40

Reasons

4. Because the said order (or determination) and judgment is in divers other respects irregular, unjust, illegal and oppressive to plaintiff in certiorari.

KELLOGG & CHANCE,

Attorneys for Plaintiff in Certiorari.

10

20

30

40

Opinion of Supreme Court

Filed, June 21, 1928.

NEW JERSEY SUPREME COURT

No. 205

October Term, 1927.

<p>EMANUEL DREYFUS, <i>Petitioner-Defendant in</i> <i>Certiorari,</i> <i>vs.</i> LUTZ COMPANY, INC., <i>Prosecutor,</i></p>	}	<p>10</p> <p><i>On Certiorari.</i></p>
--	---	--

Before Justices Trenchard, Kalisch and Katzenbach.

20

For the prosecutor, Kellogg & Chance.

For the defendant, Littauer & Herzfeld.

CAROL WEITZ, *of Counsel.*

Per Curiam: On an appeal to the court of common pleas from the Workmen's Compensation Bureau, which had dismissed the petitioner's petition for compensation filed by him with the Bureau, on the ground that the accident complained of and met with by him while in the employ of the defend-³⁰ ant prosecutor, did not arise out of the employment, the common pleas court found that the injury complained of by the petitioner was caused by an accident arising out of and in the course of his employment, and thereupon made an award for compensation.

It is this judicial action of the Court of Common Pleas which is brought before us for review, by writ of certiorari.

Four reasons are presented in the printed case⁴⁰

Opinion of Supreme Court

why the judgment of the Court of Common Pleas should be reversed.

10 In the brief of counsel of prosecutor, all the reasons are abandoned, with the exception of the first reason, which is as follows: "Because the said order (or determination) does not state in detail the scope of the employment of the petitioner, Emanuel Dreyfus, and does not state in detail the nature of the accident, but merely states the Judge's conclusion that the injury was by an accident arising out of and in the course of the employment of said Emanuel Dreyfus, so that said judgment is not supported by specific findings of fact which may be submitted to and considered by a court of review."

20 Counsel of prosecutor in their brief say: "The principal question involved is as to whether the 'determination' or order of the Common Pleas Judge, giving judgment in accordance with the law laid down by the Court of Errors and Appeals as to what specific findings of fact are required."

Other questions are raised by the recent trial, but plaintiff in certiorari rests upon one point.

30 There is no merit in the contention of counsel for prosecutor that the "determination" of the judge of the Court of Common Pleas must be supported by the specific findings of such facts as may be submitted to and considered by the Court of Review, as sustaining such determination.

40 Prosecutor relies upon *Dunnewald vs. Steers, Inc.*, 89 N. J. L., 601, decided at the June term, 1916, of the Court of Errors and Appeals, which court held that to warrant a recovery under section 2 of the Workmen's Compensation Act (P. L. 1911, p. 134, as amended by P. L. 1913, p. 302) from an employer for the death of an employee, it must appear, among other things, that the employ-

Opinion of Supreme Court

ee's death was caused by (a) an accident (b) arising out of (c) and in the course of his employment, and all the essential facts must be found by the trial judge, and must be contained in his written determination.

In the first place, it must be borne in mind that at the time of the decision referred to, the Court of 10 Common Pleas had original jurisdiction of this class of cases.

Section 20 of the statute of 1913, page 308, which law was in force at the time *Dunnewald vs. Steers, Inc., supra*, was decided, provided: "At the time fixed for hearing, or any adjournment thereof, said judge shall hear such witnesses," etc., "and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the Clerk of the Common Pleas Court, and 20 judgment shall be entered thereon in the same manner as in causes tried in the Court of Common Pleas, and shall contain a statement of fact as determined by said judge."

The Court of Common Pleas no longer has original jurisdiction of Workmen's Compensation cases. In that respect it has been supplanted by the Workmen's Compensation Bureau, P. L. 1918, chapter 149, page 429, as amended by P. L. 1921, Chapter 30 229.

Section 19 of the amended act, at page 735, relating to appeal from Workmen's Compensation Bureau to the Court of Common Pleas, provides: "The trial of such appeal shall be based exclusively upon the transcript of the record and testimony and at the time fixed for hearing, argument may be presented by each side, to the said judge, who shall in a summary manner decide the merits of the controversy, and the judgment of the court of 40

Opinion of Supreme Court

Common Pleas on any such appeal shall be conclusive and binding.”

10 The instant case in its circumstances, in regard to the legal situation, is similar to what appeared in *Charlock vs. M. W. Kellogg Co.*, 132 Atl. page 297, and where the point relied on by the prosecutor is like unto the one under consideration here, and therefore that case is controlling upon this court.

In the last cited case, like here, the finding of the Court of Common Pleas was “that the petitioner’s injury arose out of and in the course of his employment.”

It was there held that if there is any evidence in support of the finding of the common pleas judge, this finding is conclusive on the Supreme Court.

20 We find testimony in the case which tends to support the finding of the common pleas court, and therefore, its judgment is affirmed, with costs.

30

40

Rule of Affirmance and Remittitur

Entered June 25, 1928.

NEW JERSEY SUPREME COURT

No. 205 October Term, 1927.

EMANUEL DREYFUS, <i>Petitioner—Defendant in</i> <i>Certiorari,</i> <i>vs.</i> LUTZ COMPANY, INC. <i>Prosecutor.</i>	}	10 <i>On Certiorari.</i> <i>Rule for</i> <i>Judgment.</i>
--	---	--

The Court having inspected the proceedings returned with the certiorari in this cause, and the reasons assigned for affirmance, and having considered the briefs of counsel thereon do Order that the finding of the Common Pleas Court in the above case be and the same hereby is affirmed with costs in favor of Emanuel Dreyfus, Petitioner-Defendant in Certiorari, and against Lutz Co., a corporation, Defendant-Plaintiff in Certiorari, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered June 25th, 1928, on motion of, 30

CARL WEITZ,
Of Counsel.

MERVIN HERZFELD,
Attorney of Petitioner—Defendant in
Certiorari.

Notice of Appeal (Grounds Stated)
 (Grounds Stated)

Filed, July 18, 1928.

NEW JERSEY SUPREME COURT

10	EMANUEL DREYFUS, <i>Petitioner—Defendant in Certiorari, Respondent.</i>	}	<i>Notice of Appeal.</i>
	<i>vs.</i>		
	LUTZ Co., a corporation, <i>Defendant—Prosecutor in Certiorari, Appellant.</i>		

20

To Littauer & Herzfeld, Attorneys of Petitioner
 —Defendant in Certiorari-Respondent, Carl Weitz,
 of counsel, or whom it may concern.

Gentlemen:

Please Take Notice that the defendant, prosecu-
 tor in certiorari, appeals to the New Jersey Court
 of Errors and Appeals from the whole of the judg-
 ment entered in this cause, upon the following
 grounds:

30

1. Because the judgment of the New Jersey
 Supreme Court affirmed the order, determination
 and judgment of the Common Pleas Court of Hud-
 son County entered in this cause, whereas the said
 order, determination and judgment should have
 been set aside and reversed for the following rea-
 son:

40

Because the said order (or determination) does
 not state in detail the scope of the employment of
 the petitioner Emanuel Dreyfus, and does not state

Notice of Appeal (Grounds Stated)

in detail the nature of the accident, but merely states the judge's conclusion that the injury was by accident arising out of and in the course of the employment of said Emanuel Dreyfus, so that said judgment is not supported by specific findings of facts which may be submitted to and considered by a court of review.

10

KELLOGG & CHANCE,

*Attorneys of Defendant—Prosecutor in Certiorari,
Appellant.*

Endorsed.

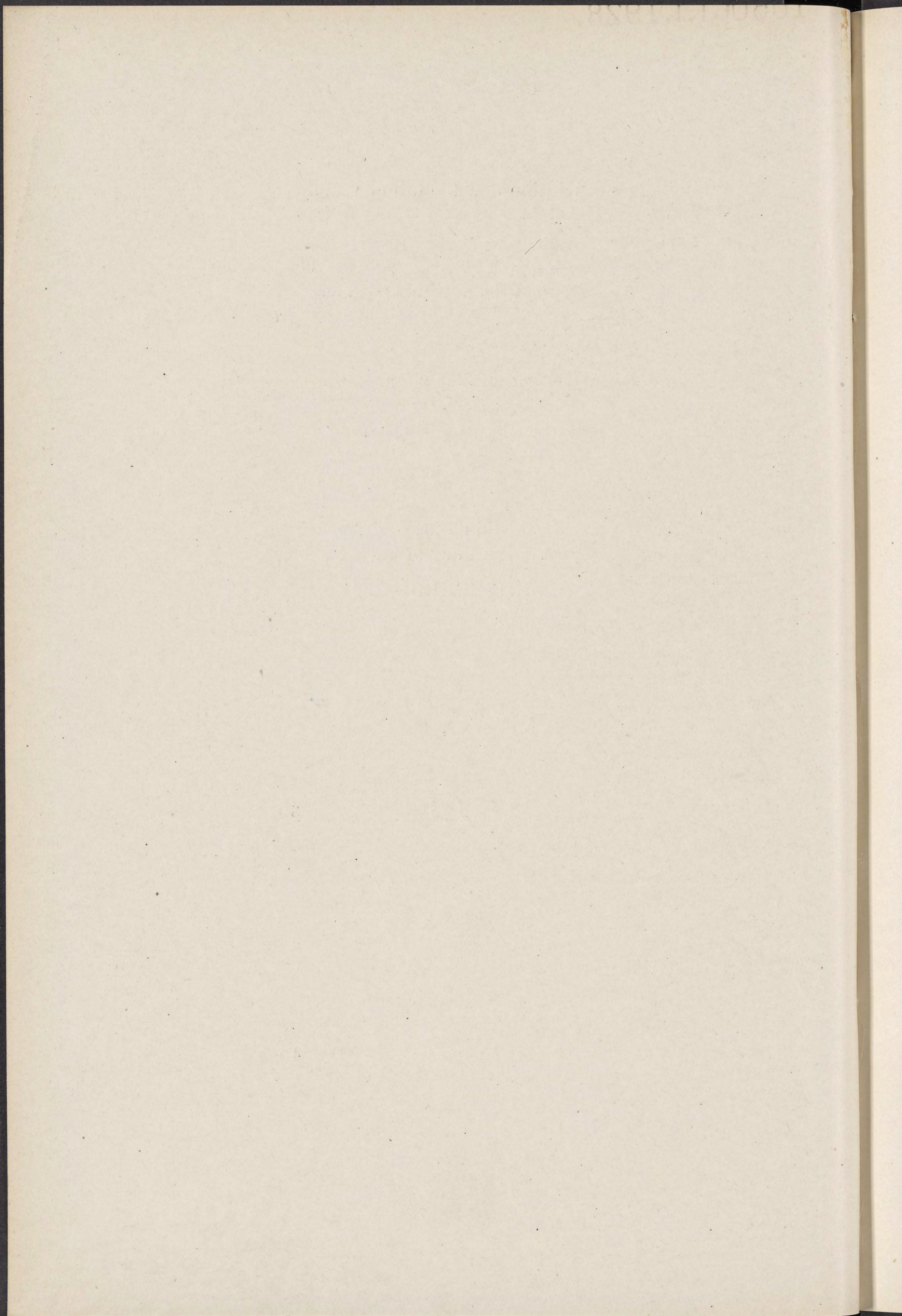
Service of a copy of the within Notice of Appeal is hereby acknowledged this 16th day of July, 1928. 20

MERVIN HERZFELD,

Attorney for Emanuel Dreyfus.

30

40



New Jersey Court of Errors and Appeals

EMANUEL DREYFUS, <i>Petitioner—Defendant in</i> <i>Certiorari—Respondent</i> vs. LUTZ Co., a corporation, <i>Defendant—Prosecutor in</i> <i>Certiorari^{or}—Appellant.</i>	<i>On Appeal</i> <i>from Supreme</i> <i>Court</i>
--	---

BRIEF FOR APPELLANT

This appeal is from a judgment of the Supreme Court in a workmen's compensation case.

The Workmen's Compensation Bureau dismissed a petition for compensation. The workman appealed to the Hudson Common Pleas which reversed the action of the Compensation Bureau dismissing the petition and made a determination (page ~~29~~) 32 awarding compensation. The employer took the matter to the Supreme Court by certiorari. The Supreme Court affirmed the Hudson Common Pleas. From that affirmance the present appeal is taken.

Stated briefly, the question involved on the certiorari and in this appeal is whether the "determination" or order of the Common Pleas Judge, giving judgment, is in accordance with law as to what findings of fact are required. In general the contention of the appellant is that the Common Pleas Judge's determination is insufficient because it does not contain specific finding of facts which may be submitted to and considered by a court of review. Appellant contends this is necessary be-

cause the law of the law relating to summary proceedings (in which category workmen's compensation proceedings belong).

FACTS

The determination of the Hudson Common Pleas is entitled "order" and appears at page 32. In that determination there is nothing stated as to the details of what the workman was doing when hurt, what his duties were or how he got his injury. The first paragraph recites that Emanuel Dreyfus "was injured in an accident arising out of and in the course of his employment." And the third paragraph says "being of the opinion that the injury complained of by the petitioner was caused by an accident arising out of and in the course of his employment."

That the determination is in such general form is in our belief the only material and proper fact for the consideration of the court in deciding this matter.

That the court may however be informed of the general manner in which the petitioner was injured we may say he cut his hand on a saw while cutting some sticks and we refer to the determination by the Workmen's Compensation Bureau dismissing the petition, which appears at page 29.

"That cutting the wood was in no way necessary or useful for the job that Mr. Dreyfus was to do with it", and "that the petitioner deviated from his regular employment doing an act which was totally unnecessary and useless for the accomplishment of his duties."

The extent of the injury was conceded. If the workman were entitled to anything there would be no controversy on the score of the amount awarded.

GROUNDS OF APPEAL.

The ground of appeal stated by the appellant is as follows:—

Because the judgment of the New Jersey Supreme Court affirmed the order, determination and judgment of the Common Pleas Court of Hudson County entered in this cause, whereas the said order, determination and judgment should have been set aside and reversed for the following reason:

“Because the said order (or determination) does not state in detail the scope of the employment of the petitioner Emanuel Dreyfus, and does not state in detail the nature of the accident, but merely states the judge’s conclusion that the injury was by accident arising out of and in the course of the employment of said Emanuel Dreyfus, so that said judgment is not supported by specific findings of facts which may be submitted to and considered by a court of review.”

POINT OF APPELLANT.

THE SUPREME COURT ERRED IN AFFIRMING THE DETERMINATION OF THE HUDSON COMMON PLEAS BECAUSE THE DETERMINATION SO AFFIRMED IS NOT SUPPORTED BY THE SPECIFIC FINDING OF SUCH FACTS AS MAY BE SUBMITTED TO AND CONSIDERED BY THE COURT OF REVIEW AS JUSTIFYING SUCH DETERMINATION.

ARGUMENT.

There are cases involving compensation proceedings before the institution of the Workmen's Compensation Bureau, which held that the judgment in every phase should be supported by a specific finding of facts which may be submitted to and considered by a court of review, so the legality of the award upon the facts found may be passed upon.

Long vs Bergen Common Pleas, 84 N. J. L. 117; *New York Ship Building Co. vs. Buchanan*, 84 N. J. L. 543; *Diskon vs. Bubb*, 88 N. J. L. 513; *Dunnewald vs. Steers*, 89 N. J. L. 601.

These cases hold that the law required the Court of Common Pleas to do more than state conclusions of law; it should state the facts found so the court may pass on the correctness of the conclusions.

The last mentioned case clearly shows that the function of the Supreme Court is not to examine the evidence returned for the purpose of determining whether it would be possible for the trial judge to find evidence upon which to base a conclusion (see page 602 of the report, at line 26). The procedure by the Supreme Court received the condemnation of the Court of Errors and Appeals in the following language: —

“We think the Supreme Court should not have entered upon that investigation. When it appeared that there had been no finding respecting these essential facts by the trial judge the Supreme Court should have sent the case back for a new trial and proper determination of facts, either upon the present evidence or upon such as the parties see fit to put in. The reason why such a course should have been adopted appears from a considera-

tion of the proper function of the Supreme Court upon review of such a proceeding. The right to review is limited to questions of law. *Banister vs. Kriger*, 84 N. J. L., 30.

The evidence in the trial court which was sent up is no substitute for the finding of facts as required by the statute."

The Supreme Court in the present case in answer to the foregoing argument said that the legal situation here is similar to that appearing in *Charlock vs. M. W. Kellogg Co.*, 132 Atl. 297 where the point relied upon was like that made in this case, and that in this case, the previous Supreme Court decision was controlling upon that court. The Supreme Court in the present case further spoke of the fact that the *Dunnewald vs. Steers* case was decided when the court of Common Pleas had original jurisdiction. It referred to the supplanting by the Workmen's Compensation Bureau of the original jurisdiction of the Common Pleas Court and of differences of the provisions of the two statutes.

We contend that it is immaterial that the present jurisdiction of the Common Pleas Court is not original. It is not bound by findings of the Workmen's Compensation Bureau. It decides for itself. Under the former procedure the workmen's compensation proceeding was a summary proceeding so far as the Common Pleas Court was concerned.

Ringwalt Linoleum Works vs. Liquor 89 N. J. L. 452; *Erie R. R. vs. Calloway* 102 Atl 887.

And the proceeding before the Common Pleas Court now is a summary proceeding as will appear from Section 19 of Chapter 149 of the laws of 1918, as amended by P. L. 1921, chapter 229. Section 19 of the amended act at page 735 speaking of the appeal in the Common Pleas provides "the trial of

such appeal shall be based exclusively upon the transcript of the record and testimony and at the time fixed for hearing argument may be presented by each side, to the said judge, who shall in a summary manner decide the merits of the controversy, and the judgment of the court of Common Pleas on any such appeal shall be conclusive and binding." It will be noted that this statute expressly indicates that the proceeding in the Common Pleas is still a summary proceeding.

Being a summary proceeding it is subject to the rule laid down in a long line of established precedents, that the record in summary proceedings must show everything essential to the legal validity of the judge's determination. For instance in *Elizabeth vs. Central R. R.* 66 N. J. L. 568, on a certiorari to a police court conviction it was held that the proceeding being of a summary nature the conviction, which is the equivalent of the determination in the present case, must recite the facts necessary to show a legal conviction. Other cases to the same effect are *Jersey City vs. Neihaus*, 66 N. J. L. 554; *Asbury Park vs. Leighton*, 69 N. J. L. 559; and *Esping vs. Elizabeth Society P. C. C.* 79 N. J. L. 357 in which case at page 359 is the following:—

"This record is radically defective. It has been settled in this state by a long line of cases based on established English precedents, that the record in summary proceedings must show, among other things, the offense charged, and not only the names of the witnesses, but the substance of the testimony that the reviewing court, in case of a review may be able to judge of its sufficiency. Of these decisions some that are especially applicable are *Keeler vs. Milledge*, 4 Zab. 142; *Buck vs. Danzen-*

backer, 8 *Vroom* 359; *Lyons vs. Spratford*, 14 *Id.* 376 (citing English cases); *Pell vs. Newark*, 20 *Id.* 594; *Hoeberg vs. Newton*, *Id.* 617; *Salter vs. Bayonne*, 30 *Id.* 128; *Kolb vs. Boonton*, 35 *Id.* 163.”

In view of the foregoing authorities relative to summary proceedings it seems clear that no special provision was necessary in the act creating the Workmen's Compensation Bureau to require the judge's determination to contain a statement of the facts he found. In other words, that was a requisite of the record in a summary proceeding. It is true that the original workmen's compensation law which was in force at the time *Dunnewald vs. Steers* supra was decided, provided that the determination shall contain a statement of facts as determined by the said judge. But we contend that the established rule relating to summary proceedings made such provision mere surplusage and that the legislature in drafting the complete revisory statute creating the Workmen's Compensation Bureau recognizing that such a clause as to a summary proceeding was surplusage, left it out. In this connection it must be remembered that the change of procedure was not accomplished by the mere amendment of a paragraph of the old act. A complete new act was enacted. The fact that this court in *Dunnewald vs. Steers* referred to the statute then in existence is clearly no indication of any intention of overruling the long line of precedents holding that in summary proceedings the determination should find the facts.

It is not denied that where there is a finding of fact by the Common Pleas Judge his finding should be conclusive if supported by any evidence, and that where the point is raised ^{that} a finding of fact is unsupported by any evidence, the Supreme Court

on certiorari may search the record to see if there is any evidence supporting the finding. The appellants point is different. It is that in this case there is no proper finding of fact stated in the record.

In *Bryant, Adm'x vs. Fissell*, 84 N. J. L., 72, the fourth syllabus is as follows:

“4. The question whether or not an injury to an employee is an ‘accident’ within the purview of section 2 of the Employers’ Liability Act’ of 1911.) Pamph. L., p. 134, ch. 95), is a mixed one of law and fact. When applied to ascertained facts, it is a question of law.”

Smith vs. Corson, 87 N. J. L., 118, at page 119, states as follows:—

“Whether death was by accident arising out of and in the course of employment presents a mixed question of law and fact.”

While there was no death in this case obviously the same principle applies to an injury case.

We challenge the court or anybody to tell from the determination (or order as it is entitled), of the Common Pleas Court (page 29) what were the ascertained facts from which the Common Pleas Judge reached his conclusion. There is no way for the court to tell from that determination or order, what witnesses the Common Pleas Judge believed or what he conceived to be the facts involved. Accordingly the record in this summary proceeding did not show on its face the facts essential to the validity of a conclusion that there was an injury by accident arising out of and in the course of the employment. It not appearing from what found facts the Common Pleas judge reasoned or that he found any facts, or what inferences he drew, or whether he drew any inferences, to reach this con-

clusion, there was no legal way for the Supreme Court to have passed upon the correctness of his determination. The Supreme Court is not legally burdened with the duty of surmising what facts the Common Pleas judge had in mind and going into the testimony to see if there was evidence which could lead to the conclusion made by the Common Pleas. As there is no such finding of facts stated in the Common Pleas determination as the law requires, the Supreme Court erred in affirming the Common Pleas judgment. No where in this record did anybody set down specific findings of facts showing liability. The Compensation Bureau specifically found facts showing no liability; either the Common Pleas judge found no facts or some facts that he found, but did not state in his determination, and by some inference which he did not state in his determination or no inference, reached the conclusion that there was liability. The Supreme Court affirmed the conclusion of the Common Pleas from his undisclosed premises and its action in so doing was error. There should be a reversal of the judgment of the Supreme Court.

Respectfully submitted,

KELLOGG & CHANCE,
Attorneys of Appellant.

*R. R. Chance
of Counsel*

1851. 10000

New Jersey Court of Errors and Appeals

<p>EMANUEL DREYFUS, <i>Petitioner—Defendant in Certiorari—Respondent</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>LUTZ Co., a corporation, <i>Defendant—Prosecutor in Certiorari—Appellant.</i></p>	}	<p><i>On Appeal from Supreme Court</i></p>
---	---	--

APPELLANT'S REPLY BRIEF

In refutation we first show the error in the argument of counsel for Dreyfus that the rule invoked by appellant requiring the determination in a summary proceeding to state findings of fact, applies only in penal cases. For this idea he cites no decision that says it. The contention is largely based upon the fact that cases cited at page 6 in appellant's main brief involve summary convictions for violation of ordinances. He also refers to *Orange vs. McGonnell*, 71 N. J. L., 418, which recognizes that the rule applies in penal statute and ordinance cases, but which does not deny it applies in other summary proceedings.

If it is suggested that only penal cases involve summary proceedings, the language of the Workmen's Compensation Bureau statute quoted at pages 5 and 6 of our main brief shows otherwise as to the appeal from the Compensation Bureau to the Common Pleas Court. So does *Phillips vs. Phillips*, 8 N. J. L., 122, in which it is said that "where a court of ancient common law jurisdiction is by some law authorized to act differently from the common law mode it is called a summary proceeding." Of course the Workmen's Compensation

proceeding is not according to the course of the Common Law.

Ringwalt Linoleum Works vs. Liquor, 89 N. J. L., 452.

Bauer vs. Common Pleas, 88 N. J. L., 128, 131.

The best answer to respondent's contention, and a support of appellant's argument that facts must be stated in the determination of compensation appeals, is the fact that the Common Pleas court sitting in a Workmen's Compensation appeal does not exercise a general or even a limited jurisdiction, but is a tribunal exercising a special jurisdiction as defined in *Den vs. Hammel*, 18 N. J. L., 73, at 79. That case clearly recognizes that such a tribunal may be one "already existing for general purposes." In other words, while the Common Pleas Court, in an ordinary action at law may possibly exercise a general jurisdiction (*Sonzogni vs. Sansevere*, 142 Atl., 417), though the N. J. Constitution indicates it is an "*inferior*" court, it exercises a special jurisdiction, in a special statutory summary proceeding such as a Workmen's Compensation case. This view is in accord with what is said in 15 C. J. 719 as follows:

"Courts of general jurisdiction may have special statutory jurisdiction in certain matters, and in such cases their decisions are treated the same as the decisions of courts of special jurisdiction."

Calkins vs. Calkins, 229 Ill., 68; 82 N. E., 242.

It is needless to state all the other illustrative cases collected in the West Publishing Co. key number Digests under the Title "Courts," paragraphs 26 and 33. Reference to two touching workman's compensation proceedings should suffice.

In *Texas Emp. Liab. Ins. Co. vs. Nelson* (Tex.), 292 S. W., 651, the 8th syllabus is:

“A court of general jurisdiction acting under special power wholly derived from a legislative act, cannot act beyond the powers thus granted, and no presumption can be indulged in favor of such jurisdiction, but the record itself must disclose all essential facts.”

In *Central Ill. Pub. Service Co. vs. Industrial Commission (Ill.)*, 127 N. E., 80, the 1st syllabus is:

“While circuit courts are courts of general jurisdiction, yet where they have special jurisdiction conferred upon them by statute, as the Workmen’s Compensation Act, proceedings and judgment under such acts are treated as proceedings and judgments of courts of special jurisdiction.”

The importance of this distinction is that a tribunal in the exercise of a general jurisdiction is not obliged to state the facts, while one exercising a special jurisdiction must do so, because in such a case there is no presumption or intendment in favor of the validity of the determination. See also *Plume vs. Howard Savings Institution*, 46 N. J. L., 211, 229, and *Boyle vs. Van Splinter*, 101 N. J. L., 92.

Thus the question determinative of the need of a finding of facts is not, as suggested for *Dreyfus*, whether the matter is penal or civil, but whether the jurisdiction exercised is general or a special one, for example like that in a Workmen’s Compensation appeal to the Common Pleas.

Other matters urged for respondent, need little, if any, reply.

The reference to a reported Supreme Court case *Charlock vs. Kellogg*, as dispositive of this appeal cannot be taken seriously. The decision on one point involved in that case was held by the Supreme Court controlling upon it in the decision now ap-

pealed. Obviously that decision is no more controlling in this court than the one appealed from. The respondent's argument amounts to saying the appeal should be dismissed because the Supreme Court decided as it did.

The quotation of the Charlock-Kellogg case on page 6 of the appellee's brief that a finding of fact is conclusive if supported by any evidence and Point II on page 8 of his brief to the same effect, relate to a matter not an issue. Appellant's objection is that the Common Pleas determination does not state a "finding of fact." No such finding of fact being stated there is nothing to be supported.

In answer to appellant's argument (page 8 of our main brief) that neither the court nor anybody can tell from the Common Pleas determination from what facts, was reached the conclusion of liability, Dreyfus's counsel says, in substance, that the Charlock case held the appeal in the Common Pleas a trial de novo and that prosecutor's contention in that case to the contrary was not well founded. That is no responsive answer. The fact that the appeal in the Common Pleas, is a trial de novo contrary to the contention of a prosecutor in another case, is no statement in this record of any premise from which the judge's conclusion of liability in the present case could follow. Appellant is not denying here that the appeal is a trial de novo. Really that it is should emphasize the need for a statement of facts found at such de novo trial.

Finally the reference to the difference between the Workmen's Compensation Bureau Statute and the original Compensation Act was anticipated on page 7 of our main brief. As pointed out there and above, the determination must show facts, due to the proceeding being a summary one under a statute giving a special jurisdiction, as distinguished from a general jurisdiction. The provision of the orig-

inal statute saying facts should be stated in the determination, being only surplusage declaratory of the law already applicable to summary proceedings, was omitted from the later statute. Its omission does not change the distinction between special and general jurisdiction and the incidents to them respectively.

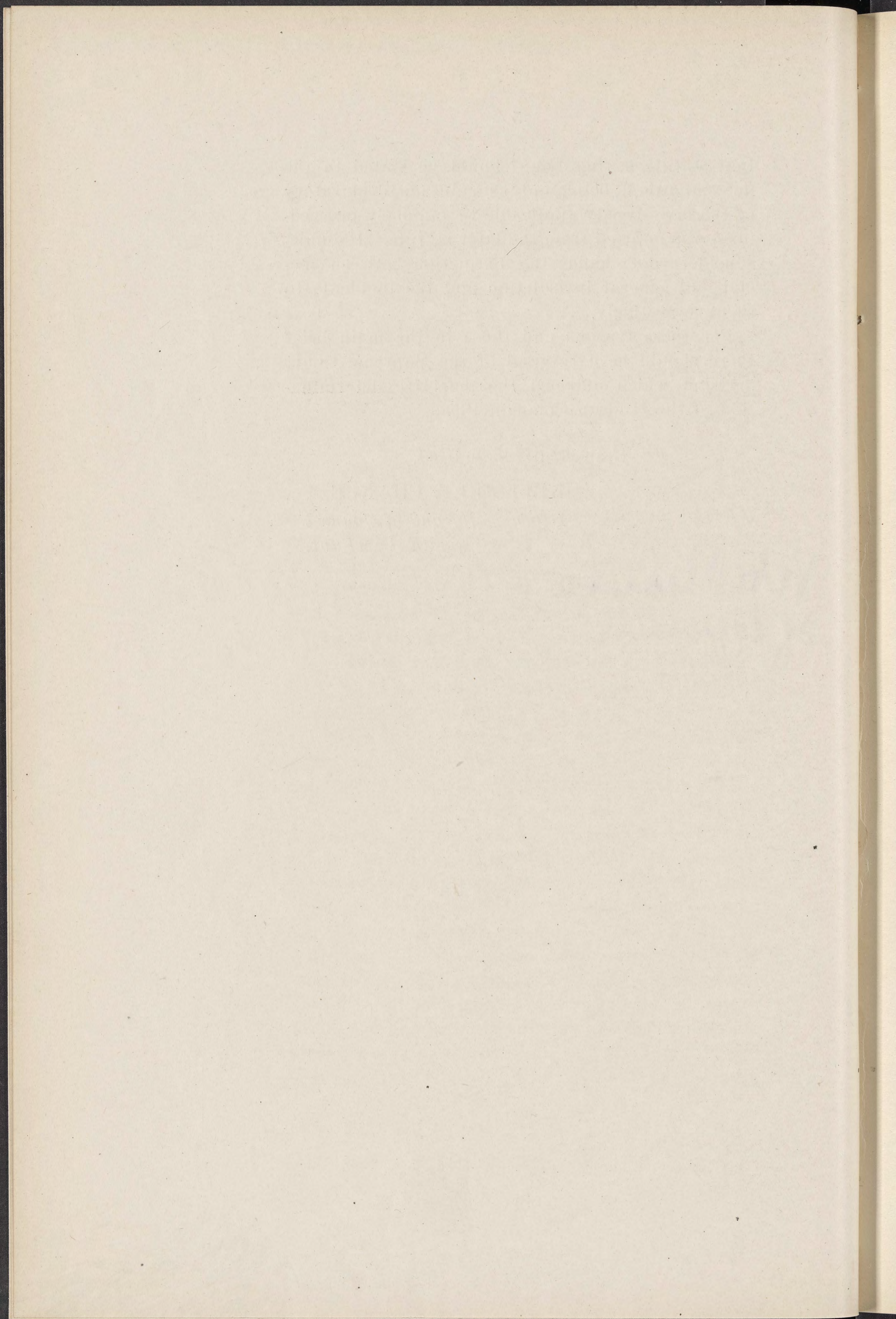
For these reasons and those in the main brief there should be a reversal of the Supreme Court decision which affirmed the defective determination of the Hudson Common Pleas.

Respectfully submitted,

KELLOGG & CHANCE,

*Attorneys for and of Counsel
with Appellant.*

*RR Chance
of Counsel*



New Jersey Court of Errors and Appeals

EMANUEL DREYFUS,
Petitioner-Defendant in
Certiorari—Respondent,

v.

LUTZ Co., a corporation,
Defendant-Prosecutor in
Certiorari—Appellant.

On Appeal
from Supreme
Court.

BRIEF FOR EMANUEL DREYFUS, APPELLEE.

This case originally was an action commenced by Emanuel Dreyfus, now appellee, in the Workmen's Compensation Bureau, wherein the said Workmen's Compensation Bureau dismissed the petition for compensation. The said workman thereupon appealed to the Hudson County Court of Common Pleas, which court reversed the action of the Workmen's Compensation Bureau and made a Determination in favor of the workman. The Determination by the Judge of the Common Pleas Court (p. 32) forms the basis of the entire controversy in this case. Thereupon the employer took the matter by certiorari to the Supreme Court, which court affirmed the decision in favor of the workman by the Hudson Common Pleas, from which affirmance the present appeal is taken.

Briefly, the contention of the appellant as we understand it, is this: Appellant claims that the law relating to summary proceedings (in which

category Workmen's Compensation proceedings belong) requires a specific finding of facts by the Judge and cites a number of cases which appellant claims sustains its position, and since the Determination by the Common Pleas Judge did not contain specific finding of fact, the judgment of the Supreme Court affirming the Common Pleas Court should be reversed.

We shall attempt to show by this brief that all cases cited by the appellant, tending to sustain this view without exception are summary *convictions* before inferior magistrates or police judges, on penal statutes or ordinances wherein the persons affected are subject to fine or imprisonment, and are not intended to affect cases involving civil jurisdiction.

We shall further attempt to show that by a reasonable construction of the statute governing this case there is no obligation upon the Judge of the Common Pleas Court to make a specific finding of fact and we shall finally show that by a reported case in this jurisdiction the Determination in the case *sub judice* is proper and legal.

POINT I OF APPELLEE.

The Supreme Court did not err in affirming the Determination of the Common Pleas Judge, because the Determination was not supported by the specific findings of such facts as may be submitted to and considered by the Court of Review as justifying such Determination.

Appellant assumes two lines of attack in its brief, and we shall answer them in the order that they appear.

Appellant's first contention is: That the courts of this State have held by judicial construction, that the Court of Common Pleas in Workmen's Compensation cases must state specific findings of fact in its Determination and cites the following cases:

Long v. Bergen Common Pleas, 84 N. J. L. 117;

New York Ship Building Co. v. Buchanan, 84 N. J. L. 543;

Diskon v. Bubb, 88 N. J. L. 515;

Dunnewald v. Steers, 89 N. J. L. 601.

To this we answer that at the time of the decisions referred to, the Court of Common Pleas had original jurisdiction of this class of cases.

Section 20 of the statute of 1913, page 308, which law was in force at the time *Dunnewald v. Steers, Inc., supra*, and the other cases above cited were decided, provided: "At the time fixed for hearing or any adjournment thereof, said judge shall hear such witnesses," etc., "and in a summary manner decide the merits of the controversy. This determination shall be filed in writing with the Clerk of the Common Pleas Court, and judgment shall be entered thereon in the same manner as in causes tried in the Court of Common Pleas, AND SHALL CONTAIN A STATEMENT OF FACTS AS DETERMINED BY SAID JUDGE."

The Court of Common Pleas no longer has original jurisdiction of Workmen's Compensation cases. In that respect it has been supplanted by the Workmen's Compensation Bureau, P. L. 1918, chapter 149, page 429, as amended by P. L. 1921, chapter 229.

Section 19 of the amended act, at page 735, relating to appeal from Workmen's Compensation Bureau to the Court of Common Pleas, provides:

“The trial of such appeal shall be based exclusively upon the transcript of the record and testimony and at the time fixed for hearing, argument may be presented by each side, to the said judge, who shall in a *summary* manner decide the merits of the controversy, and the judgment of the Court of Common Pleas on any such appeal shall be conclusive and binding.”

It will be noted that the statute in force to-day does not require that the Determination shall contain a statement of facts as determined by said Judge, and that the cases cited by appellant, *ubi supra*, relate to the construction of a statute which has been expressly repealed, and therefore cannot affect the controversy at bar.

Appellant's next argument is, that since the proceedings in the Common Pleas Court are summary in their nature, it is subject to the rule laid down in a long line of established precedents, that the record in summary proceedings must show everything essential to the legal validity of the Judge's Determination and proceeds to cite a number of cases, set out at pages 6 and 7 of appellant's brief, tending to sustain this view.

We have carefully analyzed each of the cases so cited by appellant, and find without exception that each and every of said cases are SUMMARY CONVICTIONS before inferior magistrates or police judges, on penal statutes or ordinances wherein the persons affected are subject to fine or imprisonment.

It is true that in proceedings of a *criminal* or *quasi-criminal nature*, the Determination of the Judge must recite the facts necessary to show a legal conviction and this has been set forth with succinctness and clarity by Justice Dixon in the case of *Orange v. McGonnell*, 71 N. J. L., 418.

The learned Justice on page 419 states:

“The manifest illegality in the proceedings is that they do not contain a statement of the evidence on which the *conviction* of the defendant could be lawfully based. In *all actions before inferior magistrates upon penal statutes or ordinances*, if the proceedings be summary, that is, without a right to trial by jury or an appeal, a record must be made, showing all the requisites of a legal trial, conviction and judgment, and this, whether the action be in debt, or trespass, or on mere complaint. *Buck v. Danzenbacker*, 8 Vroom 359; *Doughty v. Conover*, 13 Id. 193; *Hankinson v. Trenton*, 22 Id. 495; *Hoeberg v. Newton*, 20 Id. 617; *Salter v. Bayonne*, 30 Id. 128; *Schlacter v. Stokes*, 34 Id. 138.”

Upon no reasonable hypothesis of legal reasoning can it be argued that the above cases relating to criminal or quasi-criminal proceedings apply to an action, which, as Justice Kalisch in the case of *Bauer v. Common Pleas*, 88 N. J. L. 128 on page 131 observed:

“The proceeding (Workmen’s Compensation) is neither an action upon contract nor one of tort, but rather what the statute creating it makes it—that is, a proceeding to enforce a statutory duty or obligation arising out of the relation of the parties the basis of which is a contract, express or implied.”

Finally, the point in issue is not one of novel impression, but has been adjudicated upon by the Supreme Court of New Jersey in the case of *Charlock v. M. W. Kellogg Co.*, decided March 2, 1926,

and reported in 4 N. J. Misc. 260 and we believe same is dispositive of this case.

In that case, as in the case at bar, *the Court of Common Pleas in its Determination did not state in detail the nature of the accident, but made a finding of fact to the effect that the petitioner's injury arose out of and in the course of his employment.*

It is interesting to note that in that case the prosecutor in certiorari raised in his second point the *same* contention that is brought up in this case and in exactly the same language, to wit, "THAT THE CONCLUSION STATED BY THE COURT OF COMMON PLEAS IN THE FINDING OF FACTS AND DETERMINATION IS NOT SUPPORTED BY THE SPECIFIC FINDING OF SUCH FACTS AS MAY BE SUBMITTED TO AND CONSIDERED BY THE COURT OF REVIEW AS JUSTIFYING SUCH CONCLUSION."

To this the Court replied at page 262 that "we likewise think the second point advanced by the prosecutor is not well taken, THE FINDING OF FACT WAS SUFFICIENT, if the final conclusion reached by the Judge of the Court of Common Pleas is justified. After a review of the evidence, we have reached the conclusion that there is in the record evidence sufficient to justify the finding of the Court of Common Pleas that the claimant received his injury as the result of an accident arising out of and in the course of his employment."

The Supreme Court then reviewed the facts in the case, and on page 264, stated, "A finding of facts by a Common Pleas Judge in a Workmen's Compensation case is conclusive upon this court if there is any evidence to support it."

Kauffel v. G. F. Pfund & Son, 97 N. J. L.
335;

Lundy v. Brown & Co., 93 N. J. L. 107.

In answer to appellant's final point, which appears on page 8 of its brief to the effect that they challenge the court or anybody to tell from the Determination (or order as it is called) of the Common Pleas Court, page 32, what were the ascertained facts from which the Common Pleas Judge reached his conclusion, we state that the appellant fails to appreciate the tenor of the act concerning appeals from the Workmen's Compensation Bureau to the Common Pleas Court, and sufficient answer to the same is to refer to *Charlock v. M. W. Kellogg Co.*, *supra*, on page 262 where the Supreme Court states "The act, by its terms, contemplates a review of the evidence by the Court of Common Pleas. The act of 1918 (Pamph. L., p. 429) grants a trial *de novo* in the Court of Common Pleas to the party appealing. The 1921 amendment of the act (Pamph. L., p. 734) directs that the trial of such appeal shall be exclusively upon the transcript and testimony taken before the Workmen's Compensation Bureau, and that the Judge of the Court of Common Pleas shall, in a summary manner, decide the merits of the controversy, and that the judgment of that court on such appeal shall be conclusive and binding. The only difference between the act of 1918, as amended by the act of 1921, is that prior to the 1921 amendment the Judge of the Court of Common Pleas heard the case *de novo*, that is, he heard the evidence anew. After the act of 1921 only the evidence taken before the Workmen's Compensation Bureau was to be used upon an appeal. The difference in method provided by the 1921 amendment did not in any way alter the provision that the trial was to be a *de novo* trial. The appeal provides a new mind for the consideration of the testimony adduced. It was not intended by the legislation referred to that the Court of Common Pleas upon

the appeal should be limited merely to questions of law as it would be if the contention of the prosecutor is well founded."

POINT II OF APPELLEE.

Where the Trial Court's findings of fact in a proceeding under Workmen's Compensation Act are supported by evidence, they are conclusive on appeal.

The Court of Errors and Appeals in the case of *Lundy v. Brown & Co.*, 93 N. J. L. 469, on page 471 held: "And where a trial court's findings of fact are supported by evidence, they may not be disturbed. *Hulley v. Moosebrugger*, 88 N. J. L. 161; *New York Switch and Crossing Co. v. Mullenbach*, 92 Id. 254."

The Supreme Court in the case *sub judice* (p. 40 State of the Case) stated the following: "We find testimony in the case which tends to support the finding of the Common Pleas Court, and therefore, its judgment is affirmed, with costs."

Conclusion.

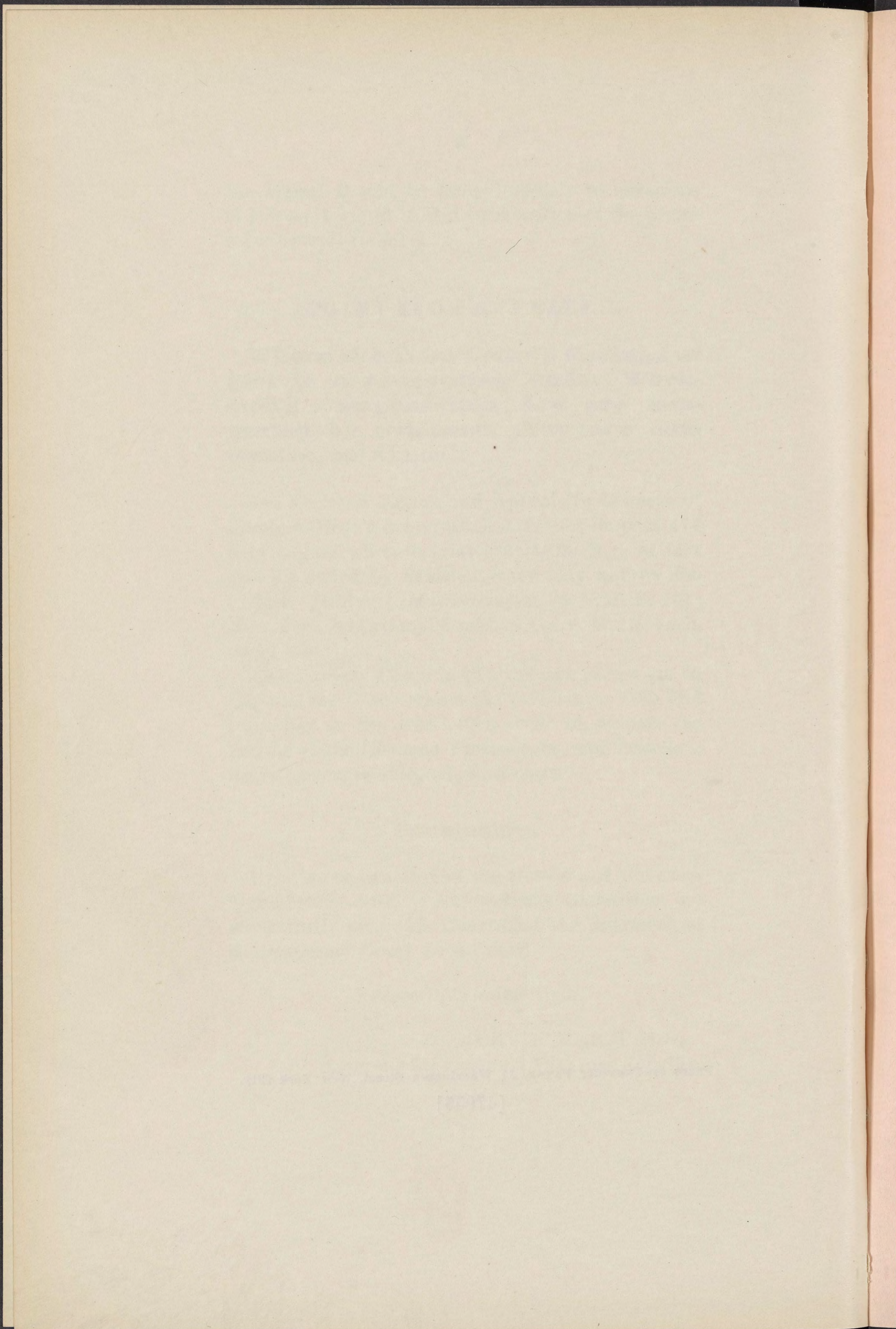
Upon a construction of the statute and the cases hereinbefore cited to support our contention, we respectfully pray this Court that the judgment of the Supreme Court be affirmed.

Respectfully submitted,

MERVIN HERZFELD,
Attorney for Emanuel Dreyfus, Appellee.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

[47955]



INDEX

	Page
Notice of Appeal.....	1
Grounds of Appeal.....	2
Writ to Show Cause.....	3
Writ of Service.....	4
Writ.....	5
Return.....	6
Writ for Attachment.....	7
Writ of Attachment.....	8
Petition for Leave to Enter Special Appearance and for Rule to Show Cause.....	9
Writ, in Attachment.....	12
Writ.....	13
Rule to Show Cause, in Attachment.....	14
Resolution.....	15
Writ.....	16
Depositions.....	17
Paul A. Rose, Direct.....	22
George E. Alden, Direct.....	24
George E. Alden, Cross.....	27
Edward F. Weddle, Direct.....	29
Edward F. Weddle, Cross.....	30
Edward F. Weddle, Re-direct.....	32
Edward O. Kolbert, Direct.....	33
Supreme Court Opinion.....	34
Memorandum Opinion Circuit Court.....	35
Writ to Issue Writ.....	37
Writ.....	38
Writ.....	39