

INDEX.

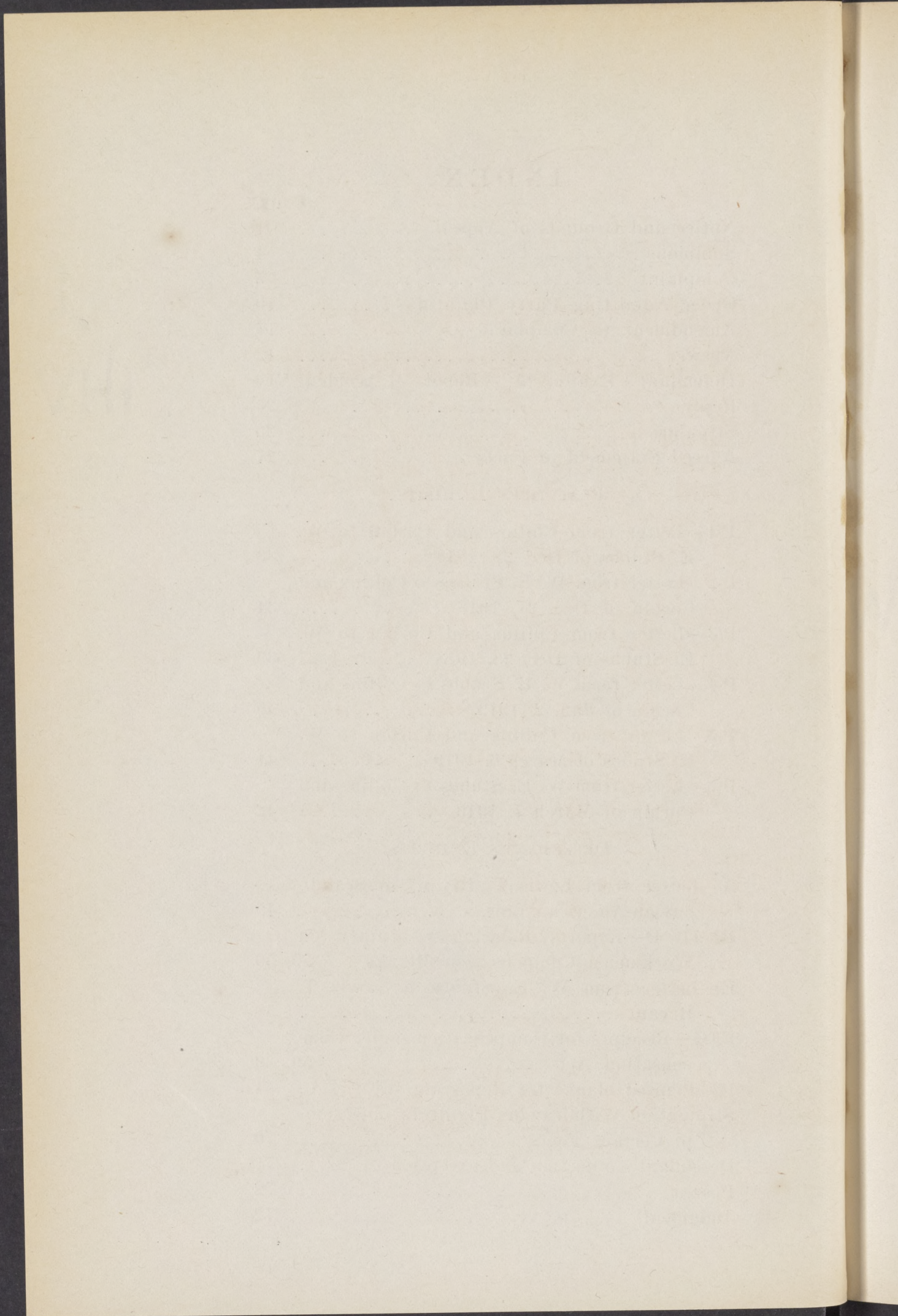
	PAGE.
Notice and Grounds of Appeal	1
Summons	4
Complaint	5
Order Admitting Party Plaintiff	10
Amendment to Complaint	11
Answer	12
Defendant's Exhibit "A"—Report of Accident	16
Reply	25
Stipulation	26
Agreed Statement of Facts	27

PLAINTIFFS' EXHIBITS:

P-1—Letter from Collins and Corbin to W. E. Stubbs of Dec. 23, 1918	33
P-2—Letter from W. E. Stubbs to Collins and Corbin of Dec. 27, 1918	34
P-3—Letter from Collins and Corbin to W. E. Stubbs of Dec. 28, 1918	39
P-4—Letter from W. E. Stubbs to Collins and Corbin of Jan. 2, 1919	40
P-5—Letter from Collins and Corbin to W. E. Stubbs of March 6, 1919	41
P-6—Letter from W. E. Stubbs to Collins and Corbin of March 7, 1919	42

DEFENDANT'S EXHIBITS:

A—Letter from Lewis T. Bryant to Scandi- navian-American Line	49
B, C, D—Reports Relating to Injury on Workmen's Compensation Blanks ..	50, 56
E—Letter from W. E. Stubbs to Lewis T. Bryant	58
F, G—Receipts for Compensation under Com- pensation Act	59, 63
H—Printed blanks for Reporting Injuries ..	64
Stipulation Withdrawing Plaintiffs' objections to Certain Facts	70
Defendant's objection and exception	71
Postea	72
Judgment	72



Notice and Grounds of Appeal.

New Jersey Supreme Court. 10

BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN and
RITA O'BRIEN, by their next friend,
BRIDGET O'BRIEN,

Plaintiffs-Appellee,
vs.

Action at
Law on
Appeal.

DET FORENDE DAMPHIBS SELSKAB,
known as SCANDINAVIAN-AMERI-
CAN LINE,

Defendant-Appellant.

20

To Messrs. Collins & Corbin, Attorneys of Plain-
tiffs-Appellee:

Take notice that the appellant, Det Forende
Damphibs Selskab, known as Scandinavian-Amer-
ican Line, appeals to the Court of Errors and
Appeals in the last resort in all causes in New
Jersey, from the whole of the judgment entered in
this cause on the following grounds.

30

1. Because the Court gave judgment for the
plaintiffs, whereas judgment should have been
given for defendant, since it appeared from the
evidence

(a) that at the time of the receipt of the
injuries resulting in his death, decedent was on
board a vessel engaged in commerce between the
United States and foreign countries, and moored

40

Notice and Grounds of Appeal.

in navigable waters of the United States, employed as a longshoreman unloading said vessel and was injured while so employed in so unloading said vessel; and the employment of said decedent and the accident occurring to him as afore-
 10 said were exclusively within the jurisdiction of admiralty, and the exclusive jurisdiction of all
 civil cases arising out of said employment of decedent by defendant, and the accident to him, are
 of admiralty and maritime jurisdiction and are within the exclusive jurisdiction of the Courts of
 the United States.

(b) That the document in writing upon which said action was based was signed by the defendant and a portion thereof signed by the plaintiff,
 20 Bridget O'Brien, pursuant to the provisions of the Workmen's Compensation Law of the State of New Jersey and Chapter 54 of the Laws of 1916
 of the State of New Jersey, and in accordance with the requirements of those laws, and that at
 the time of the accident to said decedent and of his death as a result thereof, said laws and acts
 supplemental and amendatory thereof were unconstitutional and void insofar as they provided
 for compensation for said decedent and for his
 30 widow and children by reason of accidental injuries or death suffered by said decedent while in
 the employ of defendant upon said vessel, moored at the dock of the defendant in Hoboken, New
 Jersey, in navigable waters of the United States, while said decedent was engaged as a longshore-
 man in the work of unloading said vessel and the said alleged agreement between defendant and
 said Bridget O'Brien was at all times and now is void and of no effect.

2. Because the Court found that the said paper
 40 writing relied upon by plaintiff was a contract

Notice and Grounds of Appeal.

binding upon defendant, whereas said paper writing was simply a form executed in compliance with the Workmen's Compensation Law of the State of New Jersey, and not an agreement.

3. Because the Court found for the plaintiffs whereas it should have found for the defendant since the Workmen's Compensation Laws of New Jersey being invalid as applied to admiralty cases, said alleged agreement was a nullity and not enforceable in the New Jersey Supreme Court as a common law agreement. 10

4. Because the Court found for the plaintiffs whereas it should have found for the defendant since, to sustain the plaintiffs' alleged cause of action would be against public policy.

5. Because the Court found for the plaintiffs whereas it should have found for the defendant, since said alleged agreement was without consideration and void. 20

6. Because the Court found for the plaintiffs whereas it should have found for the defendant, since, to permit plaintiffs to recover in this action would be inequitable and subject defendant, in addition to any such recovery, to suits in admiralty to recover damages for the death of said decedent.

WALTER L. GLENNEY, 30
Attorney of Defendant.

Summons.

Filed Nov. 13, 1918.

The State of New Jersey to Det Forende Damp-
 skibs Selskab, known as Scan-
 dinavian Line, a corporation:
 (L. S.) You are summoned to an-
 10 swer the annexed complaint
 of Bridget O'Brien and Mar-
 garet O'Brien, Katherine O'Brien and Rita O'Brien,
 by their next friend Bridget O'Brien, in an action
 at law in the Supreme Court. And take Notice
 that unless you file your answer to said complaint
 with the Clerk of the Supreme Court, at Trenton,
 within twenty days after service upon you of this
 writ, and the annexed complaint the plaintiffs
 may proceed in the suit and judgment may be en-
 20 tered against you.

Witness, William S. Gummere, Chief Justice of
 the Supreme Court at Trenton, this 7th day of
 November, Nineteen Hundred and Eighteen.

COLLINS & CORBIN,
 Attorneys.

ENOCH L. JOHNSON,
 Clerk.

30

40

Complaint.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN
and RITA O'BRIEN by their next
friend BRIDGET O'BRIEN,

*Plaintiffs,**vs.*

DET FORENDE DAMPSKIBS SELSKAB
known as SCANDINAVIAN-AMERI-
CAN LINE,

Defendant.

Action at
Law.

10

Plaintiffs Bridget O'Brien and Margaret O'Brien,
Katherine O'Brien and Rita O'Brien, all residing
in the City of _____, County
of Hudson and State of New Jersey, say that:

20

1. On December 23, 1916, Michael O'Brien was
employed by the defendant herein in unloading
a vessel at one of the defendant docks or piers in
the City of Hoboken, County of Hudson.

2. While so employed as aforesaid, the said
Michael O'Brien, was fatally injured and died
from the said injuries on December 27, 1916.

30

3. Thereafter the plaintiff Bridget O'Brien,
who is the widow of the said Michael O'Brien, de-
ceased, and the defendant herein entered into a
written agreement providing for the payment of
compensation to the said Bridget O'Brien as such
widow, and to the other next of kin of the said
Michael O'Brien, deceased, to wit, his three chil-
dren Margaret, Katherine and Rita, who were
nine years, seven years and two years old, respec-

40

Complaint.

tively, at said time, copy of which said agreement is hereto attached and made a part hereof marked "A."

10 4. Under said agreement the next of kin of the said Michael O'Brien, deceased, were entitled to receive from the defendant \$10 each week for a period of 300 weeks and the cost of the burial of the said Michael O'Brien, deceased, viz., \$100.

5. Thereafter in accordance with the terms of said agreement, the defendant through its agents and servants paid on account of amount the sum of \$360, which included said cost of burial, viz., \$100, and compensation of \$260 the last payment under said agreement having been made on August 24, 1917.

20 6. After the last payment of said amount so paid as aforesaid, the plaintiffs duly demanded the other payments which became due under the terms of said agreement, but the defendant refused and declined to make such payments, or any of them.

7. On or about September 29th, 1918, Bridget O'Brien was appointed next friend of Margaret O'Brien, Katherine O'Brien and Rita O'Brien to prosecute this action in their behalf.

30 8. There is now due and owing to the plaintiff under the terms of said agreement weekly payments from August 24, 1917, at the rate of \$10 per week, viz., \$620.

Plaintiffs demand \$620. together with lawful interest and costs.

COLLINS & CORBIN,
Attorneys of Plaintiffs.

"A"

Scandinavian American Line (Name of Employer)

Date of preparing this blank March 1, 1917.

Date of Accident Number of Month. 12.

Day of Month. 23.

Year. 1916.

Michael O'Brien. (Name of employee killed)

Bridget O'Brien, widow. (Name of principal dependent) 10

210 Willow Ave. (Street and residence)

Hoboken, N. J. (City or town)

Leave this line blank

40. Give date of death. Dec. 27, 1916.

41. State the cost of medical aid rendered by you or your insurance carrier, \$.....

42. Give name, date of next birthday, and age at that time, of each dependent. Also relationship to deceased. Bridget O'Brien, widow, Margaret O'Brien, age 9, Aug. 20, 1917, daughter, Katherine O'Brien 7, Jan. 14, 1917, daughter, Rita O'Brien, 2, Feb. 26, 1917, daughter. 20

43. If any dependent is physically or mentally deficient, specify which one.

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

Bridget O'Brien,
(Signature of principal dependent)

X
(His mark) 30

If signed by mark, same must be witnessed.

.....
(Signature of witness, parent or guardian.)

44. State amount of compensation paid prior to death. 0

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

"A."

Rate	Weeks	Amount
\$10	300	\$3,000

46. State the total compensation paid and to be paid the dependents only. \$3,000.

47. State the cost of burial paid by you or your insurance carrier. \$100.

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

Scandinavian-American Line,
Superintendent's Department,
per V. Lassen.

(Signature of Employer.)

The Employers' Liability Assurance Corp.

Per

20 Scandinavian American Line (Name of Employer)

Date of preparing this blank March 1, 1917.

Number of Month. 12.

Day of Month. 23.

Year. 1916.

Michael O'Brien (Name of injured employee.)

Leave this line blank

20. Did the injury result in death? Yes.

21. Did the injury require medical aid? Yes.

30 22. Will you or your insurance carrier pay for the medical aid required by law during the first two weeks? Ins. Carrier.

23. Give probable date of recovery. X

The undersigned does hereby acknowledge the correctness of the statements on this blank and agrees to accept compensation at the rate given.

..... X
(Signature of employee)

If signed by mark, same must be witnessed.

40
(Signature of witness)

"A."

24. Were the wages fixed by the output?
25. If wages were fixed by the hour, state rate per hour. 40¢
26. Give number of hours in ordinary day. 10.
27. Give number of days in ordinary working week. 6.
28. State the amount of weekly wages. (If fixed by output, see paragraph 23, page 16; Compensation Law) \$24. 10
29. State the weekly compensation to be paid the injured. \$10.

The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation as stated herein, according to law, for temporary disability and for permanent injury, if any.

The Scandinavian-American Line,
 Superintendent's Department. 20
 per V. Larson.
 (Signature of Employer)

The Employers' Liability Assur. Corp.
 per J. L. C. 3/12/17.

(Signature of insurance carrier)

Notice to the within named defendant:

In case the within summons and complaint is served upon you personally, then take notice that if you intend to make a defense to said action, you must file an affidavit of merits within ten days from the date of service hereof upon you, and must file your answer within twenty days from the date of such service, and in default of the filing thereof, judgment will be entered against you. Lawful service upon a corporation is deemed personal service for the purposes of the rule under which this notice is given (P. L. 1912, p. 394, Rule 56). 30

COLLINS & CORBIN,
 Plaintiffs' Attorneys. 40

Order Admitting Party Plaintiff.

Filed July 6th 1919.

NEW JERSEY SUPREME COURT.

10 BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN and
RITA O'BRIEN, by their next
friend, BRIDGET O'BRIEN,
Plaintiffs,

against

DET FORENDE DAMPSKIBS SELSKAB,
known as SCANDINAVIAN-AMERI-
CAN LINE,
Defendant.

20 With the consent of the plaintiffs and the de-
fendant, and upon due application ordered that
Patrick McInerney as general administrator of
the Estate of Michael O'Brien, deceased, and as
administrator ad prosequendum, be admitted as
party plaintiff in the above entitled action, and
that as to him as such party plaintiff the plead-
ings herein shall remain the same, and have the
same force and effect as though he was a party
plaintiff when the summons herein was issued,
30 the complaint herein to be regarded as amended
so as to allege his appointment as administrator,
as aforesaid, and that he joins with plaintiffs in
their demands herein.

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

We consent to the entry of the above entitled
order.

COLLINS & CORBIN,
Attorneys of Plaintiffs.

I consent to the entry of the above entitled order.

WALTER L. GLENNEY,
Attorney of Defendant.

I consent to filing as of time.

WALTER L. GLENNEY,
Attorney of Defendant.

Amendment to Complaint.

10

Filed May 20, 1919.

NEW JERSEY SUPREME COURT.

BRIDGET O'BRIEN, *et al.*,

Plaintiffs,

vs.

DET FORENDE DAMPSKIBS SELSKAB,
known as SCANDINAVIAN-AMERICAN LINE,

Defendant.

20

The complaint herein is amended as follows:

1. The following sentence is added to paragraph five:

The payments of compensation in amount \$260. cover weekly payments up until July 7, 1917.

2. Paragraph eight is amended so as to read as follows: 30

There is now due and owing to the plaintiffs under the terms of said agreement, weekly payments from July 7, 1917 to November 2, 1918, at the rate of \$10. per week, viz., \$690.

3. The conclusion of the complaint is amended so as to read:

40

Plaintiffs demand \$690., together with lawful interest and costs.

COLLINS & CORBIN,
Attorneys of Plaintiffs.

I consent to the above amendments to the complaint.

WALTER L. GLENNEY.

10 I allow the above amendments.

FRANCIS J. SWAYZE.

Dated May 3, 1919.

Answer.

Filed November 27, 1918.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

20

BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN and
RITA O'BRIEN, by their next
friend BRIDGET O'BRIEN,

Plaintiffs,

vs.

DET FORENDE DAMPSKIBS SELSKAB,
known as SCANDINAVIAN-AMERICAN
LINE,

30

Defendant.

Action at
Law

The defendant, above-named, having its principal office in the State of New Jersey, at the foot of 17th Street, Hoboken, Hudson County, New Jersey, answering the complaint herein, says:

1. It admits paragraphs "1" and "2".
 2. It denies paragraph "3", except that it admits that a document in writing made out upon
- 40 a printed form furnished by the Workmen's Com-

Answer.

pensation Aid Bureau of the State of New Jersey in accordance with the provisions of the Workmen's Compensation Law of the State of New Jersey, and the amendments thereof and supplements thereto, and pursuant to Chapter 54 of the Laws of 1916 of the State of New Jersey, of which a copy of a portion thereof is attached to the complaint marked "A", was signed by it on or about March 1st, 1917, a copy of the document in full as signed by the defendant being attached hereto and made a part hereof marked "Defendant's Exhibit A".

10

3. It denies paragraph "4".

4. It denies paragraph "5", except that it admits that it has paid to Patrick McInerney, administrator of the estate of Michael O'Brien deceased, the sum of Three hundred and sixty (\$360.) Dollars, in accordance with the terms of the said instrument in writing described in paragraph 2 hereof, One hundred (\$100.) Dollars of which is to be applied to the cost of burial of the said Michael O'Brien and Two hundred and sixty (\$260.) Dollars thereof paid at the rate of Ten (\$10.) Dollars per week to be applied for the benefit of the plaintiff, Bridget O'Brien and her three children named in paragraph "3" of the complaint, and that the last payment of such weekly payments was made on August 24th, 1917.

20

30

5. It denies paragraph "6", except that it admits that it refused and declined to make any payments to the plaintiff after August 24th, 1917.

6. It denies that it has any knowledge or information thereof sufficient to form a belief as to the truth of the allegations of paragraph "7".

7. It denies paragraph "8".

40

Answer.

FIRST DEFENSE.

1. On December 23rd, 1916, when the said Michael O'Brien was injured, the defendant was the owner of the steamship "OSCAR II", which at the time of the alleged accident, and for some-
10 time prior thereto, was moored at the defendant's docks or piers in the City of Hoboken, County of Hudson, New Jersey, in the waters of the Hudson River, which are navigable waters of the United States.
2. That the said vessel, "OSCAR II", owned by the defendant as aforesaid, was employed by it in the earning of freight charges for the carrying of the freight between the United States and foreign countries.
- 20 3. That at the time of the alleged accident, and sometime prior thereto, the said Michael O'Brien was a longshoreman employed by the defendant in the unloading of the said vessel "OSCAR II".
- 30 4. That at the time of the happening of the said accident to said Michael O'Brien, which caused his death on December 27th, 1916, he was on board of the said vessel moored in said navigable waters of the United States as aforesaid in hold No. 1, engaged in the employ of the defendant as a longshoreman in the work of unloading said vessel and while engaged in said work he was on said December 23rd, 1916, struck by a steel bar which slipped out of a draft of steel bars which were being hoisted out of the said hold No. 1, for the purpose of being unloaded from said vessel onto the dock of the defendant.
- 40 5. That the employment of said Michael O'Brien by the defendant, and the accident occurring to him on board the said vessel at the time

Answer.

and place aforesaid, were exclusively within the jurisdiction of Admiralty, and the exclusive jurisdiction of all civil causes arising out of the said employment of the said Michael O'Brien deceased, by the defendant, and the said accident to him are of Admiralty and maritime jurisdiction and are within the exclusive jurisdiction of the Courts of the United States. 10

6. That the document in writing, a partial copy of which is annexed to the complaint, marked "A", was signed by the defendant and a portion thereof signed by the plaintiff, Bridget O'Brien, pursuant to the provisions of the Workmen's Compensation Law of the State of New Jersey, and Chapter 54 of the Laws of 1916 of the State of New Jersey, in accordance with the requirements of those laws. 20

7. That at the time of the happening of the alleged accident to Michael O'Brien deceased, and at the time of his said death, as the result of the said accident, said Workmen's Compensation Law of the State of New Jersey, being Chapter 95 of the Laws of 1911, and acts supplemental thereto and amendatory thereof, and Chapter 54 of the Laws of 1916, were unconstitutional and void in so far as said laws provided for compensation for the said Michael O'Brien deceased, and for his widow and children by reason of accidental injuries suffered by the said Michael O'Brien deceased, while in the employ of the defendant upon the said vessel "OSCAR II", moored at the dock of the defendant in Hoboken, New Jersey, in navigable waters of the United States while the said Michael O'Brien deceased was engaged as a long-shoreman in the work of unloading said vessel and the said alleged agreement between the defendant and the plaintiff Bridget O'Brien, was at all times and now is, void and of no effect. 30 40

WHEREFORE, the defendant demands judgment of non-suit with costs.

WALTER L. GLENNEY,
Attorney for Defendant.

Defendant's Exhibit "A".

WEC—3476

10 Scandinavian-American Line. (Name of employer.)

Foot of 17th St. (Street address.)

Hoboken, N. J. (City or town.)

..... (Business.)

Date of accident

Number of Month. 12.

Day of Month. 23.

Year. '16.

Michael O'Brien. (Name of injured employee.)

210 Willow Ave. (Street address.)

20 Hoboken, N. J. (City or town.)

Reports industrial accident as follows: In No.

1 Hatch on S. S. "Oscar II".

(Place of accident.)

1. Date of preparing this blank. March 1, 1917.

2. Nature and extent of injury. Scalp wound on top of head.

3. Cause and manner of accident. State fully how the accident occurred: A draft of steel being hoisted up to the combing of No. 1 hold, a large steel bar slipped out of the draft and fell back into the hold landing on the end, and in turning over, gave injured a glancing blow in his head injuring him as above mentioned.

30

4. Longshoreman. (Occupation.) Irish. (Nationality.)

5. Sex: Male.

6. Age: 45.

7. Married: Yes.

Leave this blank

40

Defendant's Exhibit A.

8. Did you give written notice as per paragraph 9 of the Employers' Liability Law, that the compensation provisions of section two were not to apply to this employee? No.

9. Did you receive such notice from this employee? No.

10. Give probable date of recovery. X 10

11. If no compensation was or is to be paid the injured, state that fact below, and give reasons on reverse side.

Employers' Liability Assur. Corp.
(Name of insurance company involved.)

Form 1.

(Indorsed on back)

"State of New Jersey
Workmen's Compensation Aid Bureau
State House, Trenton"

20

WEC—3476

Scandinavian-American Line. (Name of employer.)

Date of preparing this blank. March 1, 1917.

Date of Accidents
Number of Month. 12.

Day of Month. 23.

Year. '16.

Leave this blank.....

Michael O'Brien. (Name of injured employee.)

20. Did the injury result in death? Yes. 30

21. Did the injury require medical aid? Yes.

22. Will you or your insurance carrier pay for the medical aid required by law during the first two weeks? Ins. Carrier.

23. Give probable date of recovery. X

24. Were the wages fixed by the output? _____

25. If wages were fixed by the hour, state rate per hour. 40¢.

26. Give number of hours in ordinary day. 10.

27. Give number of days in ordinary working week 6. 40

Defendant's Exhibit A.

28. State the amount of wages. (If fixed by output, see paragraph 23, page 16, Compensation Law.) \$24.00.

29. State the weekly compensation to be paid the injured. \$10.00.

10 The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation at the rate given.

.....
(Signature of employee.) (His mark.)

If signed by mark, same must be witnessed.

The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation as stated herein, according to law, for temporary disability and for permanent injury, if any.

20 THE EMPLOYERS' LIABILITY ASSUR-
ANCE CORP., LTD.
Per J. L. C. 3/12/17.

.....
(Signature of witness.)
For Scandinavian-American Line
Superintendent's Department
V. Larson.
(Signature of Employer.)

Form No. 2.
(Indorsed on back)

30 "State of New Jersey
Workmen's Compensation Aid Bureau
State House, Trenton"

WORKMEN'S COMPENSATION AID BUREAU

Special Instructions for Each Form.
(See also General Instructions on Reverse Side.)

FORM NO. 1.

40 No. 1 must be filled out and mailed to the Bureau as soon as it is known that the disability ex-

Defendant's Exhibit A.

ceeds two weeks, or that permanent injury results.

If not filed within four weeks after the accident the employer is liable a fine of \$50.00.

When possible Form No. 2 should accompany Form No. 1 without detaching them from each other.

FORM No. 2.

10

No. 2 is an agreement for medical aid and for compensation for temporary disability covering lost time, exclusive of the first two weeks waiting period covered by medical aid.

This form should be mailed with Form No. 1 when possible. If not received within 21 days after the accident, Chapter 54, Laws of 1916, directs the Bureau to place the case in the hands of the Court.

20

Forms No. 2 and 3 must be signed by the employer and also by the employee. If unable to write, or prevented by the injury, the employee's mark may be substituted, his name being filled in by his representative, who must sign as witness.

Agreement for minors must be signed by parent or guardian also.

FORM No. 3.

No. 3 is a statement of compensation paid for temporary disability and an agreement for compensation to be paid for permanent injury. If there is no permanent injury, mark compensation questions concerning same with an X, complete the remaining portion of the blank and sign in the same manner as Form No. 2.

30

This form must be made out and mailed at the close of the temporary disability period, or as soon thereafter as the extent of the permanent injury can be determined.

Upon its receipt, if satisfactory, an approval will be mailed.

40

Form No. 3.

Defendant's Exhibit A.

.....

(Name of employer.)

Date of preparing this blank

Number of Month

Day of Month

10 Year.

.....

(Name of injured employee.)

Leave this blank

30. Did injury result in death?

31. State cost of medical aid rendered by you or your insurance carrier.

32. Did any permanent injury result from this accident, such as amputation or loss or impairment of any member or function?

20 33. State fully the nature of such permanent injury.

(Fuller statement may be placed on other side of blank.)

34. For how long a time was this employee unable to work because of the injury?

(State weeks and fraction thereof.)

35. For how many weeks was compensation paid for temporary disability?

36. Give total compensation for temporary disability.

30 37. For how many weeks will compensation be paid for amputation?

38. For how many weeks will compensation be paid for other permanent injury?

39. The weekly compensation will be.

40 40. Give total compensation for permanent injury.

The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation as herein set forth.

40

(Signature of employee.)

.....

(His mark.)

Defendant's Exhibit A.

If signed by mark, same must be witnessed.

.....
(Signature of witness or guardian.)

The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation according to law, for the permanent injury stated herein.

10

.....
(Signature of employer.)

(Indorsed on back)

“State of New Jersey,
Workmen’s Compensation Aid Bureau
State House, Trenton”

Remarks.

Further statement or sketch may be placed on this side.

20

STATE OF NEW JERSEY.

GENERAL INSTRUCTIONS COVERING REPORTING
INDUSTRIAL ACCIDENTS

To The

WORKMEN’S COMPENSATION AID BUREAU,
DEPARTMENT OF LABOR,
TRENTON, N. J.

When in need of these blanks apply to the Bureau.

Report on Forms 1, 2 and 3 every accident causing loss of time of more than two weeks, or of entailing compensation. See Chap. 156, Laws 1912.

30

Minor accidents not causing over two weeks’ disability on involving compensation, need not be reported on these compensation forms.

Fill in names and dates on Forms Nos. 1, 2 and 3, immediately after the accident, and preserve each carefully until it can be mailed to the Bureau.

40

Defendant's Exhibit A.

No settlement will be approved until all three blanks are received by the Bureau.

Upon receipt of first report of fatal accident, Form No. 4, a substitute for Form No. 3, will be mailed the employer. In fatal cases Form 3 will not be required.

- 10** Chapter 54, Laws 1916, requires the employer to file, in reference to every accident entitling the injured to compensation, a signed statement of the settlement. This law also requires the Aid Bureau to approve every settlement or certify the case to the Court. Answer definitely and fully every question which applies, and mark other questions with an X, on all blanks, or this Bureau will be unable to approve the settlement. All cases not approved must be certified to the Court
- 20** for a hearing, and the law empowers the Judge to assess the court charges and the fees of both legal advisers against the delinquent employer. This expense may be avoided by careful reporting.

Note: The Workmen's Compensation Aid Bureau will be glad to offer suggestions looking toward a settlement of any disputed or doubtful case, in order to obtain prompt compensation payment, and to prevent needless expense to the employer.

- 30** Mail reports to Workmen's Compensation Aid Bureau, State House, Trenton, N. J.

WEC—3476

Scandinavian-American Line. (Name of employer.)

Date of preparing this blank. March 1, 1917.

Date of Accident Number of Month. 12.

Day of Month. 23.

Year. '16.

- 40** Michael O'Brien. (Name of employee killed.)

Defendant's Exhibit A.

Bridget O'Brien, widow. (Name of principal dependent.)

210 Willow Ave. (Street and residence.)

Hoboken, N. J. (City or town.)

Leave this line blank

40. Give date of death. Dec. 27, 1916.

41. State the cost of medical aid rendered by you or your insurance carrier. \$..... **10**

42. Give name, date of next birthday, and age at that time, of each dependent. Also relationship to deceased. Bridget O'Brien, widow. Margaret O'Brien, age 9, Aug. 20, 1917, daughter. Katherine O'Brien, 7, Jan. 14, 1917, daughter. Rita O'Brien, 2, Feb. 26, 1917, daughter.

43. If any dependent is physically or mentally deficient, specify which one.

The undersigned does hereby affirm the correctness of the foregoing statements and agrees to accept compensation as herein set forth. **20**

Bridget O'Brien

(Signature of principal dependent.) (His mark)

If signed by mark, same must be witnessed.

.....
(Signature of witness, parent or guardian.)

44. State amount of compensation paid prior to death. 0

45. State the weekly compensation to be paid the dependents at the various rates. **30**

Rate	Weeks	Amount
\$10	300	\$3,000

46. State the total compensation paid and to be paid the dependents only. \$3,000.

47. State the cost of burial paid by you or your insurance carrier. \$100.

The undersigned hereby affirms the correctness of the above statement, and does hereby agree to pay to the dependents named, compensation as **40**

Defendant's Exhibit A.

dated herein, in the same manner and at the same periods that the deceased received the wages.

THE EMPLOYERS' LIABILITY
ASSURANCE CORP. LTD.

Per J. L. C. 3/12/17.

10

FOR SCANDINAVIAN-AMERICAN LINE,
Superintendent's Department

Per V. Lassen.

(Signature of employer.)

(Endorsed on back)

On fatal form, No. 4, a statement of the compensation paid to injured employee prior to his death, should be given.

This form is also an agreement for compensation to be paid the dependents.

20

This blank must be made out and returned to this Bureau within one month after the death of the injured, to prevent certification to the court See Chapter 54, Laws 1916.

Mail to Workmen's Compensation Aid Bureau,
State House, Trenton, N. J.

30

40

Reply.

Filed January 4, 1919.

NEW JERSEY SUPREME COURT.

BRIDGET O'BRIEN, <i>et al.</i> , <div style="text-align: right;"><i>Plaintiffs,</i></div> <div style="text-align: center;"><i>vs.</i></div> DET FORENDE DAMPSKIBS SELSKAB, known as SCANDINAVIAN-AMERICAN LINE, <div style="text-align: right;"><i>Defendant.</i></div>	}	Action at Law.	10
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Plaintiffs for reply say that they deny paragraphs 2 and 4.

ANSWER TO FIRST DEFENSE. **20**

1. They have no knowledge nor information sufficient to form a belief as to paragraphs 1, 2, 3, 4 and 5.
2. They deny paragraphs 6 and 7.

OBJECTIONS IN POINT OF LAW.

On the trial of the above action plaintiffs will move to strike out the First Defense so-called of the answer for the following reasons:

1. Because neither the said defense nor any averment thereof sets up a just and legal defense to the plaintiffs' complaint. **30**
2. Because by an Act of Congress passed October 6, 1917, proceedings under the Workmen's Compensation Act of the State of New Jersey were saved to the plaintiffs.
3. Because a contract to pay weekly sums in

settlement of a liability of an employer for the death of an employe, equal to the maximum provided in the Workmen's Compensation Act of 1911 (P. L. 134) and supplements thereto, may be enforced by the persons claiming the payments, in the Supreme Court by a common law action.

10 4. Because the signing of the document annexed to the complaint and marked "A" is admitted in the answer to have been executed by the defendant, and therefore the answer of the defendant is sham and frivolous.

COLLINS & CORBIN,
Attorneys of Plaintiffs.

Stipulation.

Filed July 5, 1919.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

20 BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN and
RITA O'BRIEN, by their next
friend, BRIDGET O'BRIEN and PAT-
RICK McINERNEY, Administrator
of the Estate of MICHAEL
O'BRIEN, deceased,

Action at
Law.

Plaintiffs,

30 *vs.*

DET FORENDE DAMPSKIBS SELSKAB,
known as SCANDINAVIAN-AMERI-
CAN LINE,

Defendant.

It is hereby stipulated between the attorneys of the respective parties that the above entitled matter be brought on for trial before Honorable

Francis J. Swayze, without a jury, on Saturday, May 3rd, 1919, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated April 16, 1919.

COLLINS & CORBIN,
Attorneys of Plaintiffs.
WALTER L. GLENNEY,
Attorney of Defendant.

I consent to filing as of time.

WALTER L. GLENNEY,
Attorney of Defendant.

10

Agreed Statement of Facts.

Filed July 5, 1919.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

BRIDGET O'BRIEN and MARGARET O'BRIEN, KATHERINE O'BRIEN and RITA O'BRIEN, by their next friend, BRIDGET O'BRIEN, <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>against</i></p> DET FORENDE DAMPSKIBS SELSKAB, known as SCANDINAVIAN-AMERI- CAN LINE, <p style="text-align: center;"><i>Defendant.</i></p>	} }	20 Action at Law. 30
--	--	---

The parties to the above entitled action for the purpose of submitting the said action for determination by the Court, hereby agree that the following is a correct statement of the facts upon which the pleadings herein are based:

1. On December 23rd, 1916, Michael O'Brien was employed by the defendant herein, a corpora-

40

Agreed Statement of Facts.

tion organized and existing under and by virtue of the laws of the Kingdom of Sweden, as a longshoreman engaged in unloading the steamship "OSCAR II", which at that time, and for some time prior thereto, was moored at the defendant's docks in the City of Hoboken, County of Hudson, State of New Jersey, in the waters of the Hudson River which waters are navigable waters of the United States.

10

2. On said date and for some time prior and subsequent thereto, the said vessel "OSCAR II", was owned by the defendant and employed by it in the earning of freight charges for the carrying of freight between the United States and foreign countries.

20

3. On said date the said Michael O'Brien, in the course of his work as a longshoreman employed by the defendant in the unloading of the said vessel "OSCAR II", was in and upon said vessel, and while in the course of his said work he was in the hold of the said vessel on said date, when a draft of steel was being hoisted out of the hold of said vessel, in the course of unloading it. A large steel bar slipped out of said draft and fell back into the hold of the ship and struck the said Michael O'Brien, causing injuries.

30

4. That on December 27th, 1916, the said Michael O'Brien died in St. Mary's Hospital, at Hoboken, New Jersey, as the result of the injuries received on December 23rd, 1916, while in the hold of the said steamship "OSCAR II", as aforesaid.

40

5. That the said Michael O'Brien died leaving him surviving as his only next of kin and dependents, a widow, Bridget O'Brien, and three infant children, Margaret O'Brien, Katherine O'Brien and Rita O'Brien, which said widow and children are the plaintiffs in the within action.

Agreed Statement of Facts.

6. That the said Margaret O'Brien was born on August 20th, 1908; that the said Katherine O'Brien was born on January 14th, 1910, and that the said Rita O'Brien was born on February 28th, 1915.

7. That on the 31st day of January, 1917, the Surrogate of the County of Hudson, State of New Jersey, granted letters of administration upon the estate of the said Michael O'Brien deceased, to Patrick McInerney who accepted the same. 10

8. That under date of January 22nd, 1917, a letter was sent by Louis T. Bryant, Commissioner of Labor, to the above named defendant, a copy of which is hereto attached marked Defendant's Exhibit A.

9. That on March 13th, 1917, printed forms furnished by the Workmen's Compensation Aid Bureau of the State of New Jersey, designated as forms numbers 1, 2 and 4, filled out and of which form No. 4, was signed by Bridget O'Brien, one of the plaintiffs above-named, and her signature witnessed by Patrick McInerney aforesaid, and also signed by the defendant above-named, and countersigned by the Employers' Liability Assurance Corporation, Ltd., were filed in the office of the Secretary of the Workmen's Compensation Aid Bureau, at the State House, at Trenton, New Jersey. Copies of said printed forms numbers 1, 2, and 4, filled out and signed in exactly the same manner as the originals on file in the office of said Secretary of said Workmen's Compensation Aid Bureau, are hereto attached and marked Defendant's Exhibits B, C and D. 20 30

10. That on December 22nd, 1917, a printed form issued by the Workmen's Compensation Aid Bureau, designated as form No. 6, was filled out and signed by W. E. Stubbs, Secretary of said 40

Agreed Statement of Facts.

10 Workmen's Compensation Aid Bureau, and was duly issued from the office of the said Workmen's Compensation Aid Bureau, and sent to the above-named defendant. A copy of said form No. 6 filled out and signed in exactly the manner in which the original was filled out and signed, and sent to the defendant as aforesaid, is hereto annexed marked Defendant's Exhibit E.

20 11. That subsequent to the signing and filing of the said printed forms of the Workmen's Compensation Aid Bureau, the defendant paid to Patrick McInerney, administrator of the estate of the said Michael O'Brien deceased, One hundred (\$100.) Dollars in reimbursement of funeral expenses incurred in the burial of the said Michael O'Brien, for which it received a receipt in writing, a copy of which is hereto attached, marked Defendant's Exhibit F.

12. That thereafter the defendant paid to Patrick McInerney, as administrator of the estate of Michael O'Brien deceased, various sums of money by drafts, for which it received receipts in writing, signed by the said Patrick McInerney individually, and as administrator of the estate of Michael O'Brien deceased, copies of which receipts are hereto annexed, marked Defendant's Exhibit G.

30 13. That the last of such payments made by the defendant to the said Patrick McInerney, as administrator of the estate of Michael O'Brien deceased, was made on or about August 24th, 1917, and the total payments to said Patrick McInerney, as administrator of the estate of Michael O'Brien deceased, including the said One hundred (\$100.) Dollars for burial expenses, amounted to Three hundred and sixty (\$360.) Dollars.

40 14. On May 21st, 1917, the United States Su-

Agreed Statement of Facts.

preme Court, decided the cases of *Southern Pacific Co. vs. Jensen*, (244 U. S. 205), and *Clyde S. S. Co. vs. Walker*, (244 U. S. 255).

15. That on October 3rd, 1917, the Surrogate of the County of Hudson, State of New Jersey, granted letters of administration, ad prosequendum, upon the estate of said Michael O'Brien deceased, to the said Patrick McInerney, who accepted the same, and thereafter an action was brought in the New Jersey Supreme Court, by said Patrick McInerney, administrator of the estate of Michael O'Brien deceased, and Bridget O'Brien plaintiffs, against the above-named defendant, based upon defendant's Exhibit D herein, which said action was discontinued subsequent to the commencement of the within action.

16. That on or about September 29th, 1918, Bridget O'Brien was appointed next friend of Margaret O'Brien, Katherine O'Brien and Rita O'Brien, to prosecute the above entitled action in their behalf.

The plaintiff objects to the facts set forth in paragraphs 7, 8, 9, 10, 14 and 15, supra, on the ground that they are immaterial, and irrelevant.

17. Mr. W. E. Stubbs, Deputy Commissioner and Secretary of the Workmen's Compensation Bureau of the State of New Jersey, if called as a witness would have testified to the facts set forth in his letters to Messrs. Collins & Corbin, in reply to their letters, all of which letters between said Mr. Stubbs and said Messrs. Collins & Corbin are hereto attached and made part hereof marked Exhibits P-1 to P-6 inclusive; said letters bearing date as follows:

P-1 Dec. 23, 1918 from Collins & Corbin to W. E. Stubbs.

P-2 Dec. 27, 1918 from W. E. Stubbs to Collins & Corbin.

Agreed Statement of Facts.

P-3 Dec. 28, 1918 from Collins & Corbin to W. E. Stubbs.

P-4 Jan. 2, 1919 from W. E. Stubbs to Collins & Corbin.

P-5. Mch. 6, 1919 from Collins & Corbin to W. E. Stubbs.

10 P-6. Mch. 7, 1919 from W. E. Stubbs to Collins & Corbin.

The enclosures referred to in the letters from Mr. Stubbs, supra, are part of the said letters as Exhibits herein and copies of said enclosures will be found immediately following the letters in which they are referred to.

18. The certified copy of forms 2 and 4 in the case of Hoboken Manufacturers' Railroad Company—William Holzapfel, March 13, 1917, referred to in Mr. Stubbs' letter dated March 7, 1919 (Exhibit P-6), supra, and the copy of the approval of said forms referred to in said letter contain the writings and approval thereof which were passed upon in Case No. 47, March Term, 1918 of the New Jersey Court of Errors and Appeals, which was the case of *Margaret C. Holzapfel, et al., vs. Hoboken Manufacturers' Railroad Company*, which was argued on March 7, 1918, before the said Court of Errors and Appeals and
20
30 decided June 17, 1918.

19. On October 3, 1917, the Surrogate of the County of Hudson and State of New Jersey, granted letters of administration ad prosequendum upon the Estate of said Michael O'Brien, deceased, to the plaintiff Patrick McInerney, who accepted the same.

20. The said Patrick McInerney paid all moneys that he received from the defendant to the plaintiff Bridget O'Brien who is his sister, and he
40 was appointed both general administrator and administrator ad prosequendum.

21. Attached hereto and made a part hereof, marked Defendant's Exhibits H and I, are blank copies of the forms issued by the Workmen's Compensation Aid Bureau to employers, to be used by the employer in making report to the Workmen's Compensation Aid Bureau in the event of injury to the employee, and Defendant's Exhibits B, C and D, as filed in the office of the Secretary of the Workmen's Compensation Aid Bureau at Trenton, were upon such printed forms. 10

22. The defendant objects to the facts set forth in paragraphs 17 and 18, *supra*, on the ground that they are immaterial and irrelevant.

23. No objection is made by either party hereto to the form or manner in which the facts appear herein.

COLLINS & CORBIN,
Attorneys of Plaintiffs.
WALTER L. GLENNEY, 20
Attorney of Defendant.

I consent to the filing as of time.

WALTER L. GLENNEY,
Attorney of Defendant.

Exhibit P-1.

Dec. 23, 1918.

Scandinavian-American Line—Michael O'Brien,
fatally injured December 23, 1916.

W. E. Stubbs, Esq., 30
Sec'y. Workmen's Compensation Bureau,
Trenton, N. J.

Dear Sir:

Kindly send us at our expense a complete copy of the document that was filed with you in the above matter. On September 7, 1917 you advised us that a formal agreement upon your

Exhibit P-2.

regular form 4, which was a substitute for form 3, adapted to use in fatal cases was filed with you, signed by the Scandinavian-American Line, the Employers' Liability Assurance Corporation and Bridget O'Brien, and that Patrick McInerney was witness. We should like to have a complete copy of the entire document that was filed and we would prefer this copy to be on a form identical with the form used by the parties and that the copy contain all endorsements, interlineations, etc., both on the front thereof and on the back, and we should also like to have this copy certified for we desire to use it at the trial in the above action in the Supreme Court and such a certified copy will probably do away with the necessity of subpoenaing someone from your office to attend the trial at Jersey City. Send us your bill for this copy and we shall promptly remit.

Very truly yours,

COLLINS & CORBIN.

EAM/LC

Exhibit P-2.

STATE OF NEW JERSEY

DEPARTMENT OF LABOR.

Workmen's Compensation Bureau.

Trenton, N. J., Dec. 27, 1918.

Collins & Corbin,
243 Washington St.,
Jersey City, N. J.

Gentlemen: In Re: Scandinavian-American Line
—Michael O'Brien Fatal Case No. 12-23-16

I am in receipt of your communication of December 23 in reference to the above matter, and am sending you herewith copy of the compensation agreement on Form 2 and Form 4, giving of

Exhibit P-2.

course, the typewritten copy of the signatures as nearly as same can be deciphered; also, typewritten copy of rubber stamp used in connection with signatures so far as same is legible.

On the back of the two forms you will observe my affidavit as to the correctness of the copies and I trust that this will be of service in determining the merits of the case in question and I would advise you that there is no charge for these copies. **10**

Very truly yours,
W. E. Stubbs,
Deputy Commissioner
Sec'y. of Bureau.

S*P

Scandinavian-American Line. (Name of employer.) **20**

Date of preparing this blank. March 1, 1917.

Date of Accident Number of Month. 12.

Day of Month. 23.

Year. '16.

Michael O'Brien. (Name of injured employee.)

Leave this blank. March 13, 1917.

20. Did the injury result in death? Yes.

21. Did the injury require medical aid? Yes.

Fatal.

22. Will you or your insurance carrier pay for the medical aid required by law during the first two weeks? Ins. Carrier. **30**

23. Give probable date of recovery. X

The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation at the rate given.

.....
(Signature of employee) (His mark)

If signed by mark, same must be witnessed.

24. Were the wages fixed by the output? **40**

Exhibit P-2.

25. If the wages were fixed by the hour, state rate per hour. 40¢.

26. Give number of hours in ordinary day. 10.

27. Give number of days in ordinary working week. 6.

10 28. State the amount of weekly wages. (If fixed by output, see paragraph 23, page 16, Compensation Law.) \$24.00.

29. State the weekly compensation to be paid the injured. \$10.00.

The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation as stated herein, according to law, for temporary disability and for permanent injury, if any.

20 THE EMPLOYERS' LIABILITY ASSURANCE CORP.
For Scandinavian-American Line,
V. Larson,
Superintendent's Department.
(Signature of Employer.)

.....
(Signature of witness.)
Per J. L. C. 3/12/17.

.....
(Signature of Insurance Carrier.)

Form No. 2. Detach at this line.
Endorsed:

30 This is to certify the foregoing are exact copies of Forms 2 and 4 in above fatal case.

W. E. Stubbs,
Sec'y of Bureau.

Subscribed and sworn to before me }
this 27th day of December, 1918. }

Elizabeth M. Ashton,
Notary Public.
State of New Jersey.

40 Workmen's Compensation Aid Bureau.
State House, Trenton.

Exhibit P-2.

Copy.

WEC—3476

Scandinavian-American Line. (Name of employer.)

Date of preparing this blank. February 9, 1917.

Date of Accident
Number of Month. 12.

Day of Month. 23.

Year. '16.

Michael O'Brien. (Name of employee killed.)

Bridget O'Brien, widow. (Name of principal dependent.)

210 Willow Avenue. (Street and residence.)

Hoboken, N. J. (City or town.)

Leave this line blank. Mar. 13, 1917.

40. Give date of death. December 27, 1916.

41. State the cost of medical aid rendered by you or your insurance carrier. \$.....

42. Give name, date of next birthday, and age at that time of each dependent. Also relationship to deceased. Bridget O'Brien, widow. Margaret, daughter August 29th, 1917, 9 years. Katherine, daughter, January 14th, 1918, 7 years. Rita, daughter February 28th, 1917, 2 years.

43. If any dependent is physically or mentally deficient, specify which one.

44. State amount of compensation paid prior to death. _____

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

Rate	Weeks	Amount
\$10	300	\$3,000

46. State the total compensation paid and to be paid the dependents only. \$3,000.

47. State the cost of burial paid by you or your insurance carriers. \$100.

The undersigned does hereby affirm the correctness of the foregoing statements and agrees to

10

20

30

40

Exhibit P-2.

accept compensation as herein set forth.

Bridget O'Brien X

(Signature of principal dependent.) (His mark)

If signed by mark, same must be witnessed.

Patrick McInerny,

(Signature of witness, parent or guardian.)

10 The undersigned hereby affirms the correctness of the above statements, and agrees to pay to the dependents names, compensation as stated herein, in the same manner and at the same periods that the deceased received his wages.

THE EMPLOYERS' LIABILITY ASSURANCE CORP.

For Scandinavian-American Line,

V. Larson,

Superintendent's Department.

(Signature of Employer.

Per J. L. C. 3/12/17.

20 Form No. 4, Fatal. See reverse side.

Endorsed:

This is to certify the foregoing are exact copies of Forms 2 and 4 in above fatal case.

W. E. Stubbs,

Sec'y of Bureau.

Subscribed and sworn to before me }
this 27th day of December, 1918. }

Elizabeth M. Ashton,

Notary Public.

30 On fatal form, No. 4, a statement of the compensation, paid to injured employee prior to his death should be given.

This form is also an agreement for compensation to be paid the dependents. This blank must be made out and returned to this Bureau within one month after the death of the injured, to prevent certification to the court. See Chapter 54, Laws 1916. Mail to Workmen's Compensation Aid Bureau, State House, Trenton, N. J.

40

Exhibit P-3.

Dec. 28, 1918.

Scandinavian-American Line—Michael
O'Brien, fatal case, Dec. 23, 1916.

W. E. Stubbs, Esq.,
Deputy Commissioner,
Workmen's Compensation Bureau,
State House,
Trenton, N. J.

10

Dear Sir:

We have your kind favor of the 27th inst. in the above matter and thank you for same, in which you enclosed certified copies of form 2 and form 4 in this case. The attorney for the Scandinavian-American Line filed an answer to our complaint and attached as Exhibit "A" thereto a form of the agreement which he says was executed. This form which he attached to his answer includes more than what is contained in your forms 2 and 4. For convenience we enclose the answer which has the Exhibit "A" attached thereto and would appreciate it very much if you would kindly tell us whether the other parts of said Exhibit "A" can be said to be part of the compensation agreement, and if they are may we request that you kindly send us certified copies of same. We are sorry that we have to give you so much trouble in this matter but we are very desirous of getting the form of the agreement absolutely correct for we intend to appeal this case to the Court of Errors.

20

30

Very truly yours,

EAM§LC

COLLINS & CORBIN.

P. S.

Please return enclosure.

40

Exhibit P-4.

STATE OF NEW JERSEY.

DEPARTMENT OF LABOR.

Workmen's Compensation Bureau.

Trenton, N. J., Jan. 2, 1919.

10 Collins & Corbin,
243 Washington St.,
Jersey City, N. J.

In Re: Scandinavian-American Line—
Michael O'Brien, Fatal 12-23-16.

Gentlemen:

I am in receipt of your esteemed favor of December 28 and desire to advise you that the copies of Forms 2 and 4 which we transmitted to you contain what we understand to be the entire agreement for compensation.

20 Form 1, which first appears in the defendant's Exhibit "A", is a statement of the facts of the accident and have nothing to do with an agreement and it is not our custom to give at any time copy of this statement filed with us on form 1 because of the instructions to be found in Paragraph 3 of the Chapter 156, Laws of 1912. I will state, however, for your information that the defendant's Exhibit "A", Form 1 is an exact duplicate of the report signed in our office.

30 With respect to the instructions for the use of Forms 1, 2, and 3, and the further general instructions on the reverse side of the assembled blanks, a sample of which I am enclosing, wish to state that if these were forwarded to us with Forms 1, 2 and 3, they were not kept and are not in the record, as they form no part of an agreement and are never intended to be returned to this office, but simply instructions as to how the blanks shall be used.

40

Form 3 does not apply to fatal accidents, not being adapted to making records pertaining thereto. If it were sent to us in the blank form, in which Exhibit "A" indicates it was never placed with the record being neither pertinent or of use.

It would seem, therefore, that I have nothing further that I can send you which will help you in the present situation. I am clearly of the opinion that the agreement as contained on Forms 2 and 4 cover the situation.

10

Very truly yours,
 W. E. STUBBS,
 Deputy Commissioner,
 Sec'y. of Bureau.

S*P

Exhibit P-5.

March 6, 1919.

20

W. E. Stubbs, Esq.,
 Deputy Commissioner,
 Workmen's Compensation Bureau,
 State House,
 Trenton, N. J.

Dear Sir:

We should like to secure an exact copy of the agreement on file with you between Margaret Holzapfel and Hoboken Manufacturers Railroad Company—also Globe Indemnity Company, covering death of William Holzapfel who died on March 13, 1917, and we should like you to certify that the copy is a true copy. We shall be pleased to pay any fees there may be for this certified copy upon receiving memo of same.

30

We should also like to know whether the agreement filed in the case of Michael O'Brien, deceased, who died December 23, 1916, and was employed by the Scandinavian-American Line, was

40

approved by the Workmen's Compensation Aid Bureau, and if so we should like to secure a copy of the approval in that case of the agreement. We understand that the law requiring approval went into effect March 15, 1916.

Thanking you for your kindness in this matter, and for past favors, we beg to remain,

Yours truly,

10

COLLINS & CORBIN.

EAM/J

Exhibit P-6

STATE OF NEW JERSEY.

DEPARTMENT OF LABOR.

Workmen's Compensation Bureau.

Trenton, N. J., March 7, 1919.

Collins & Corbin,

20

243 Washington St.,

Jersey City, N. J.

In Re: Hoboken Manufacturers R. R.

Co.—Wm. Holzappel 3-13-17.

Scandinavian-American Line—Michael

O'Brien, Fatal, 12-23-16.

Gentlemen:

I am in receipt of your communication of March 6 in reference to the above cases, and complying with your request, I am sending you with this a certified copy of Form 2 and Form 4 in the first
30 named case; also, the approval issued by this Bureau on the Settlement set forth.

With this, I am also sending you a copy of our approval issued in the O'Brien case.

Trusting that this—the information which you desire, I beg to remain

Very truly yours,

W. E. STUBBS,
Deputy Commissioner,
Sec'y. of Bureau.

40

Exhibit P-6.

S*P

P. S.—The signatures given on the forms in question are not entirely legible, but we are giving them as we interpret them.

Hoboken Manufacturers' R. R. Co. (Name of employer) 10

Date of preparing this blank, 5/18/17.

Date of Accident
Number of Month. 3.

Day of Month. 13.

Year. '17.

William Holzapfel. (Name of injured employee.)

Leave this line blank

20. Did the injury result in death? Yes.

21. Did the injury require medical aid? Yes.

22. Will you or your insurance carrier pay for the medical aid required by law during the first two weeks? Yes. 20

23. Give probable date of recovery. _____

The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation at the rate given.

Margaret Holzapfel
(Signature of employee) (His mark.)

If signed by mark, same must be witnessed.

24. Were the wages fixed by the output? _____

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

26. Give number of hours in ordinary day. _____

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

28. State the amount of weekly wages. (If fixed by output, see paragraph 23, page 16, Compensation Law.) \$22.50.

29. State the weekly compensation to be paid the injured. \$10.00.

The undersigned hereby affirms the correctness 40

Exhibit P-6.

of the statements given, and guarantees the paying of compensation as stated herein, according to law, for temporary disability and for permanent injury, if any.

GLOBE INDEMNITY COMPANY, Agent G. C. Stevens.

10

.....

(Signature of employer)

.....

(Signature of witness)

By C. J. Meehegan.

.....

(Signature of insurance carrier)

Form No. 2.

Detach at this line.

Endorsed:

State of New Jersey.

Workmen's Compensation Aid Bureau

20

State House, Trenton.

3/7/19.

This is to certify that the above is a true and correct copy of Form 2 in the above case.

W. E. Stubbs,

Secretary of Bureau,

Deputy Commissioner.

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

Date of preparing this blank 5/18/17.

Number of Month. 3.

30

Day of Month. 13.

Year. '17.

Date of accident.

William Holzapfel. (Name of employee killed.)

Mrs. Margaret Holzapfel. (Name of principal dependent.)

816 Rose St. (Street and residence.)

West Hoboken, N. J. (City or town.)

Leave this line blank

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

40

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

Exhibit P-6.

42. Give name, date of next birthday, and age at that time, of each dependent. Also relationship to deceased. Margaret, widow, age 37, William, son, 12 yrs. next Oct. 13, 1917, Anna, 10 yrs. next Nov. 18, 1917 (daughter), John, son, 8 yrs. next Aug. 30, 1917, Mary, daughter, 6 yrs. next Jan. 21, 1918, James, son 3 yrs. next July 14, 1917, Margaret, daughter, born April 6, 1917.

10

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

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

Margaret Holzapfel
(Signature of principal dependent) (His mark)

If signed by mark, same must be witnessed.

(Signature of witness, parent or guardian.)

20

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

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

Rate	Weeks	Amount
60%	of \$22.50	\$10.00

Limited to maximum of \$10.00 per week.

46. State the total compensation paid and to be paid the dependents only. \$3,000.00.

30

47. State the cost of burial paid by you or your insurance carrier. \$100.

The undersigned hereby affirms the correctness of the above statements, and agrees to pay to the dependents named, compensation as stated herein, in the same manner and at the same period that the deceased received his wages.

GLOBE INDEMNITY COMPANY, Agent, G. C. Stevens.

By C. Meehagan.

.....
(Signature of employer.)

40

Exhibit P-6.

.....
(Signature of witness, parent or guardian.)

Form No. 4, Fatal. See reverse side.

Endorsed:

10 I, W. E. Stubbs, Secretary of the Bureau, hereby certify that this is a true and correct copy of the Form 4 in the above case.

W. E. Stubbs.

On fatal form, No. 4, a statement of the compensation paid to injured employee prior to his death, should be given.

This form is also an agreement for compensation to be paid the dependents.

20 This blank must be made out and returned to this Bureau within one month after the death of the injured, to prevent certification to the court. See Chapter 54, Laws, 1916.

Mail to Workmen's Compensation Aid Bureau, State House, Trenton, N. J.

Copy.

Scandinavian-American Line. (Name of employer.)

Hoboken, N. J.

Date of Accident
Number of Month. 12.

Day of Month. 23.

30 Year. '16.

Michael O'Brien. (Name of employee.)

Mrs. Bridget O'Brien. (Name of principal dependent.)

210 Willow Ave.,

Hoboken, N. J.

DEPARTMENT OF LABOR,
STATE HOUSE.

Lewis T. Bryant,

40 Commissioner of Labor.

Trenton, N. J., 3/22, 1917.

Exhibit P-6.

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

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

Compensation to dependents at the following rates:

Rate	Weeks	Amount
\$10	300	\$3,000
\$—	—	\$—
\$—	—	\$—
\$—	—	\$—

Cost of burial not exceeding \$100. Total 300. \$3,000. 20

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

WORKMEN'S COMPENSATION AID BUREAU.
Per W. E. Stubbs,
Secretary.

Form No. 6.

PRESERVE THIS APPROVAL.

Copy.

Hoboken Manufacturers' R. R. Co. (Name of employer.) 30

Ft. Fifth St.,
Hoboken, N. J.

Date of Accident
Number of Month. 3.
Day of Month. 13.
Year. '17.

William Holzapfel. (Name of employee.)

Mrs. Margaret Holzapfel. (Name of principal dependent.) 40

Exhibit P-6.

8161 Rose St. (Street and residence.)
West Hoboken, N. J. (City or town.)

DEPARTMENT OF LABOR
STATE HOUSE.

Lewis T. Bryant,

10 Commissioner of Labor.

Trenton, N. J., 6/19, 1917.

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

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

20 Compensation to dependents at the following rates:

Rate	Weeks	Amount
\$10	300	\$3,000
\$—	—	\$—
\$—	—	\$—
\$—	—	\$—

Cost of burial not exceeding \$100. Total 300. \$3,000.

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

WORKMEN'S COMPENSATION AID BUREAU.

Per W. E. Stubbs,
Secretary.

Form No. 6.

PRESERVE THIS APPROVAL.

Defendant's Exhibit "A."**IMPORTANT STATE BUSINESS.**

\$50 Fine

For Failure to Report an Accident.

STATE OF NEW JERSEY.

Department of Labor, Lewis T. Bryant, Commissioner of Labor.

Workmen's Compensation Aid Bureau, William E. Stubbs, Secretary. 10

State House, Trenton, Jan. 22, 1917.

Scandinavian Amer. Line,

Gentlemen:

We are advised by the Emp. Liab. Assur. Corp., of industrial injury sustained by

Name		Injured
Michael O'Brien	Fatal	12/23/16

while in your employ.

We fail to find report in our files from you, in reference thereto, as required by Chapter 156, of the Laws of 1912, and Chapter 54, of the Laws of 1916. 20

We understand that the above mentioned cases incapacitated the injured for more than two weeks, or involved some permanent injury. If so, will you not kindly fill out one of the enclosed blanks for each, and return it to us? An early response to this request will be accepted by the Commissioner of Labor as a compliance with the terms of the Law concerning the time of reporting. Please do not make it necessary that a second notice be sent you regarding the above. 30

If any accident in question did not result in disability of two weeks, or there was no permanent injury, we will appreciate your advising us of that fact, mentioning the date of accident, so that we may correct our records. It will be satis-

factory to us if you simply draw a line through any such case, and return this paper to us.

Kindly preserve any remaining blanks for future use.

Thanking you for your attention to this matter, I am,

Respectfully yours,

Lewis T. Bryant,

Commissioner of Labor.

10

(Enclosed with this letter were the printed blanks known as forms No. 1, 2, 3, and 4, used in making defendant's Exhibits "B" "C" and "D". Defendant's Exhibits "H" and "I" are true representations of the printed forms enclosed.)

Defendant's Exhibit B.

Scandinavian-American Line. (Name of employer.)

20

Foot of 17th Street. (Street address.)

Hoboken, N. J. (City or town.)

..... (Business.)

Date of Accident

Number of Month.

Day of Month.

Year.

Michael O'Brien. (Name of injured employee.)

210 Willow Ave. (Street address.)

Hoboken, N. J. (City or town.)

Reports industrial accident as follows:

30

In No. 1 Hatch on S. S. "Oscar II". (Place of accident.)

Date of preparing this blank. March 1, 1917.

1. Did injury result in death?

2. Nature and extent of injury. Scalp wound on top of head.

3. Cause and manner of accident. State fully how the accident occurred: A draft of steel being hoisted up to the combing of No. 1 hold, a large steel bar slipped out of the draft and fell back

40

Defendant's Exhibit C.

into the hold landing on the end and in turning over, gave injured a glancing blow in his head injuring him as above mentioned.

4. Longshoreman (Occupation.) Irish. (Nationality.)

5. Sex. Male.

6. Age. 45.

10

7. Married. Yes.

Leave this blank

8. Did you give written notice as per paragraph 9 of the Employers' Liability Law, that the compensation provisions of section two were not to apply to this employee? No.

9. Did you receive such notice from this employee? No.

10. Give probable date of recovery. X.

11. If no compensation was or is to be paid the injured state that fact below, and give reasons on reverse side.

20

Employers' Liability Assur. Corp.

Employers' Liability Assur. Corp.

(Name of insurance company involved.)

Detach at this line.

Form No. 1.

WEC-3476.

Defendant's Exhibit C

Scandinavian-American Line. (Name of employer.)

30

Date of preparing this blank. March 1, 1917.

Number of Month. 12.

Day of Month. 23.

Year. '16.

Michael O'Brien. (Name of injured employee.)

Leave this blank

20. Did the injury result in death? Yes.

21. Did the injury require medical aid? Yes.

40

Date of Accident

Defendant's Exhibit C.

22. Will you or your insurance carrier pay for the medical aid required by law during the first two weeks? Ins. Carrier.

23. Give probable date of recovery. X

10 The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation at the rate given.

.....
(Signature of employee.) (His mark.)

If signed by mark, same must be witnessed.

.....
(Signature of witness.)

24. Were the wages fixed by the output?

25. If wages were fixed by the hour, state rate per hour. 40¢.

26. Give number of hours in ordinary day. 10.

20 27. Give number of days in ordinary working week. 6.

28. State the amount of weekly wages. (If fixed by output, see paragraph 23, Compensation Law.) \$24.00.

29. State the weekly compensation to be paid the injured. \$10.00.

30 The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation as stated herein, according to law, for temporary disability and for permanent injury, if any.

.....
(Signature of employer, or insurance carrier.)
Form No. 2. Detach at this line.

WORKMEN'S COMPENSATION AID BUREAU.

Special Instructions for Each Form.
(See also General Instructions on reverse side.)
FORM No. 1.

No. 1 must be filled out and mailed to the Bureau as soon as it is known that the disability exceeds two weeks, or that permanent injury results.

40 If not filed within four weeks after the accident the employer is liable to a fine of \$50.00.

Defendant's Exhibit C.

When possible Form No. 2 should accompany Form No. 1 without detaching them from each other.

FORM No. 2.

No. 2 is an agreement for medical aid and for compensation for temporary disability covering lost time, exclusive of the first two weeks waiting period covered by medical aid.

This form should be mailed with Form No. 1 when possible. If not received within 21 days after the accident, Chapter 54, Laws 1916, directs the Bureau to place the case in the hands of the Court.

10

Forms Nos. 2 and 3 must be signed by the employer and also by the employee. If unable to write, or prevented by the injury, the employee's mark may be substituted, his name being filled in by his representative, who must sign as witness. Agreement for minors must be signed by parent or guardian also.

FORM No. 3.

No. 3 is a statement of compensation paid for temporary disability and an agreement for compensation to be paid for permanent injury. If there is no permanent injury, mark compensation questions concerning same with an X, complete the remaining portion of the blank and sign in the same manner as Form No. 2.

This form must be made out and mailed at the close of the temporary disability period, or as soon thereafter as the extent of the permanent injury can be determined.

20

Upon its receipt, if satisfactory, an approval will be mailed.

Detach at this line.

.....

(Name of employer.)

Date of preparing this blank.....

Date disability began.....

Date injured was able to resume work.....

Date of accident.
Number of Month.....

Day of Month.....

Year.....

30

(Name of injured employee.)

.....

Leave this blank.....

30. Did injury result in death?

31. State cost of medical aid rendered by you or your insurance carrier.

32. Did any permanent injury result from this accident, such as amputation or loss or impairment of any member or function?

40

33. State fully the nature of such permanent injury.

Defendant's Exhibit C.

(Fuller statement may be placed on other side of blank)

The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation as herein set forth.

10
(Signature of employee.) (His mark.)

If signed by mark, same must be witnessed.

.....
(Signature of witness or guardian.)

34. For how long a time was this employee unable to work because of the injury? (State weeks and fraction thereof.)

35. For how many weeks was compensation paid for temporary disability?

20 36. Give total compensation for temporary disability.

37. For how many weeks will compensation be paid for amputation?

38. For how many weeks will compensation be paid for other permanent injury?

39. The weekly compensation will be.

40. Give total compensation for permanent injury.

30 The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation according to law, for the permanent injury stated herein.

.....
(Signature of employer, or insurance carrier.)

Form No. 3.

If statements are given on reverse side, underscore the word OVER.

STATE OF NEW JERSEY.
WORKMEN'S COMPENSATION AID BUREAU
STATE HOUSE, TRENTON.

40

REMARKS.

Further statement or sketch of injury may be placed on this side.

Defendant's Exhibit C.

STATE OF NEW JERSEY.
 General Instructions Covering Reporting
 Industrial Accidents

To The
 WORKMEN'S COMPENSATION AID BUREAU.
 DEPARTMENT OF LABOR.
 TRENTON, N. J.

When in need of these blanks apply to the Bureau. **10**

Report on Forms 1, 2 and 3 every accident causing loss of time of more than two weeks, or entailing compensation. See Chap. 156, Laws 1912.

Minor accidents not causing over two weeks' disability or involving compensation, need not be reported on these compensation forms.

Fill in names and dates on Forms Nos. 1, 2 and 3, immediately after the accident, and preserve each carefully until it can be mailed to the Bureau.

No settlement will be approved until all three blanks are received by the Bureau.

Upon receipt of first report of fatal accident, Form No. 4, a substitute for Form No. 3, will be mailed the employer. In fatal cases Form No. 3 will not be required.

Chapter 54, Laws 1916, requires the employer to file, in reference to every accident entitling the injured to compensation, a signed statement of the settlement. This law also requires the Aid Bureau to approve every settlement or certify the case to the Court. Answer definitely and fully every question which applies, and mark other questions with an X, on all blanks, or this Bureau will be unable to approve the settlement. All cases not approved must be certified to the Court for a hearing, and the law empowers the Judge to assess the court charges and the fees of both legal advisers against the delinquent employer. This expense may be avoided by careful reporting. **20**

Note: The Workmen's Compensation Aid Bureau will be glad to offer suggestions looking toward a settlement of any disputed or doubtful case, in order to obtain prompt compensation payment, and to prevent needless expense to the employer.

Mail reports to Workmen's Compensation Aid Bureau, State House, Trenton, N. J. **30**

STATE OF NEW JERSEY.

WORKMEN'S COMPENSATION AID BUREAU
 STATE HOUSE, TRENTON.

STATE OF NEW JERSEY.

WORKMEN'S COMPENSATION AID BUREAU
 STATE HOUSE, TRENTON.

Defendant's Exhibit D.

Scandinavian-American Line. (Name of employer.)

Date of preparing this blank. February 9, 1918.

Number of Month. 12.

Day of Month. 23.

10 Year. '16.

Date of accident

Michael O'Brien. (Name of killed employee.)

Bridget O'Brien, Widow. (Name of principal dependent.)

210 Willow Avenue. (Street and residence.)

Hoboken, N. J. (City or town.)

Leave this line blank

40. Give date of death. December 27, 1916.

41. State the cost of medical aid rendered by you or your insurance carrier. \$.....

20 42. Give name, date of next birthday, and age at that time, of each dependent. Also relationship to deceased.

Bridget O'Brien, widow.

Margaret, daughter, August 29, 1917, 8 yrs.

Catherine, daughter, January 14, 1918, 8 yrs.

Rita, daughter, February 28, 1917, 2 yrs.

43. If any dependent is physically or mentally deficient, specify which one.

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

Bridget O'Brien

X

(Signature of principal dependent.) (His mark.)

If signed by mark, same must be witnessed.

Patrick McInerney.

(Signature of witness, parent or guardian.)

44. State amount of compensation paid prior to death.

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

Defendant's Exhibit D.

Rate	Weeks	Amount
\$10.00	300	\$3,000.

46. State the total compensation paid and to be paid the dependents only. \$3,000.

47. State the cost of burial paid by you or by your insurance carrier. \$100.00

The undersigned hereby affirms the correctness of the above statements, and agrees to pay to the dependents named, compensation as stated herein, in the same manner and at the same periods that the deceased received his wages. 10

For Scandinavian-American Line,
Employers' Liab. Assur. Corp.
Superintendent's Department,
V. Larson.
per JDC.

(Signature of employer or insurance carrier.) 20

Form No. 4, Fatal. See reverse side.
3/12/17.

I hereby certify that the statements given on the reverse side of this blank are a true copy of the agreement filed with this Bureau.

W. E. Stubbs,
Secretary of Bureau.

Sworn to and subscribed before me }
this 18th day of April, 1918. }

Elizabeth M. Ashbon,
Notary Public. 30

On fatal form, No. 4, a statement of the compensation paid to injured employee prior to his death should be given. This form is also an agreement for compensation to be paid the dependents.

This blank must be made out and returned to this Bureau within one month after the death of the injured, to prevent certification to the court. See Chapter 54, Laws 1916.

Mail to Workmen's Compensation Aid Bureau, State House Trenton, N. J.

Defendant's Exhibit E.

Scandinavian-American Line. (Name of Employer.)

Hoboken, N. J.

10 Date of accident Number of Month. 12.
 Day of Month. 23.
 Year. '16.

Michael O'Brien. (Name of employee.)

Bridget O'Brien. (Name of principal dependent.)

210 Willow Ave., Hoboken, N. J.

DEPARTMENT OF LABOR

STATE HOUSE

LEWIS T. BRYANT,

Commissioner of Labor.

20 Trenton, N. J., 3/22/17.

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

Compensation for period of disability, exclusive of first two weeks, at \$. per week, for weeks, totalling \$.

Compensation to dependents at the following rates:

30	Rate	Weeks	Amount.
	\$10.00	300	\$3,000.00

Cost of burial not exceeding \$100. Total 300. \$3,000.00.

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

WORKMEN'S COMPENSATION AID BUREAU,
 Per W. E. Stubbs, Secretary.

40 Form No. 6 Preserve this approval.

I hereby certify that the statements given on the reverse side of this blank are a true copy of the approval issued by this Bureau.

W. E. STUBBS.

Secretary of Bureau.

Sworn to and subscribed before me }
this 18th day of April, 1918. }

Elizabeth M. Ashton,

Notary Public.

10

March 9, 1919.

Defendant's Exhibit F.

WEC—3476.

Duplicate

Credit.....

THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LIMITED,

UNITED STATES BRANCH.

20

New York Agency, 56 Maiden Lane, New York
\$100.00 Date, March 13th, 1917.

Received of THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION, LTD. One Hundred and 00/100 Dollars, in reimbursement of Funeral Expenses in the case of Michael O'Brien vs. Scandinavian American Line.

Patk. McInerney, Adm.

Policy No. WCNJ—77795 (7300)

(Stamped) May 26, 1917.

30

Defendant's Exhibit G.

RECEIPT FOR COMPENSATION UNDER NEW JERSEY WORKMEN'S COMPENSATION ACT.

Chapters 95 and 368. Laws of 1911.

Received of the Scandinavian American Line of Hoboken, N. J., the sum of Eighty and 00/100

40

(~~\$~~80.00) Dollars, being that portion of the weekly

wages of Michael O'Brien, deceased, for the period from the 6th day of January 1917, to the 3rd day of March, 1917, to which I am entitled under the above Act, by reason of the accidental death of the said Michael O'Brien on or about December 23rd, 1916. I being the administrator of the goods, chattels and credits which were of Michael O'Brien, deceased.

Dated, March 7, 1917.

PATRICK McINERNEY,
Individually and as administrator of the Estate of Michael O'Brien, deceased.

Address: 465 Grove Street,
Jersey City, N. J.

D. A. NEWTON,
Witness.

Defendant's Exhibit G.

RECEIPT FOR COMPENSATION UNDER NEW JERSEY WORKMEN'S COMPENSATION ACT.

Chapters 95 and 368. Laws of 1911.

Received of the Scandinavian American Line of Hoboken, N. J., the sum of Twenty-00/100 (~~\$~~20.00) Dollars, being that portion of the weekly wages of Michael O'Brien, deceased, for the period from the 3rd day of March, 1917, to the 17th day of March, 1917, to which I am entitled under the above Act, by reason of the accidental death of the said M. O'Brien, on or about Dec. 23rd, 1916. I being the administrator of the goods, chattels and credits which were of the said Michael O'Brien, deceased.

Dated, Mar. 21, 1917.

PATRICK MCINERNEY,
Individually and as ad-
ministrator of the Estate
of Michael O'Brien, de-
ceased.

Address: 465 Grove St.,
Jersey City, N. J.

S. L. Bitruni,
Witness.

10

Defendant's Exhibit G.

RECEIPT FOR COMPENSATION UNDER NEW JERSEY WORKMEN'S COMPENSATION ACT.

Chapters 95 and 368. Laws of 1911.

Received of the Scandinavian American Line,
of Hoboken, N. J., the sum of Twenty-00/100
Dollars, being that portion of the weekly wages
of Michael O'Brien, deceased, for the period from
the 17th day of March, 1917, to the 31st day o.
March, 1917, to which I am entitled under the
above Act, by reason of the accidental death of
the said Michael O'Brien on or about Dec. 23rd,
1916. I being the administrator of the goods,
chattels and credits which were of the said
Michael O'Brien, deceased.

20

Dated, Mar. 28th, 1917.

PATRICK MCINERNEY,
Individually and as ad-
ministrator of the Estate
of Michael O'Brien, de-
ceased.

30

Address: 465 Grove St.,
Jersey City, N. J.

EDWARD GROTH,
Witness.

40

Defendant's Exhibit G.RECEIPT FOR COMPENSATION UNDER NEW JERSEY
WORKMEN'S COMPENSATION ACT.

Chapters 95 and 368. Laws of 1911.

10 Received of the Scandinavian American Line,
of Hoboken, N. J., the sum of Twenty-00/100
(\$20.00) Dollars, being that portion of the week-
ly wages of Michael O'Brien, deceased, for the
period from the 31st day of March, 1917, to the
14th day of April, 1917, to which I am entitled
under the above Act, by reason of the accidental
death of the said Michael O'Brien on or about
Dec. 23rd, 1916. I being the administrator of the
goods, chattels and credits which were of the said
Michael O'Brien, deceased.

20 Dated, April 3, 1917.

PATRICK MCINERNEY,
Individually and as ad-
ministrator of the Estate
of Michael O'Brien, de-
ceased.

Address: 465 Grove St.,
Jersey City, N. J.

EDWARD GROTH,
Witness.

30 WEC-3476

Defendant's Exhibit G.RECEIPT FOR COMPENSATION UNDER NEW JERSEY
WORKMEN'S COMPENSATION ACT.

Chapters 95 and 368. Laws of 1911.

40 Received of the Scandinavian American Line,
of Hoboken, N. J., the sum of Twenty and 00/100

(\$20.00) Dollars, being that portion of the weekly wages of Michael O'Brien, deceased, for the period from the 14th day of April, 1917, to the 28th day of April, 1917, to which I am entitled under the above Act, by reason of the accidental death of the said Michael O'Brien on or about Dec. 23rd, 1916. I being the administrator of the goods, chattels and credits which were of Michael O'Brien, deceased.

10

Dated,

191 .

PATRICK MCINERNEY,
Individually and as ad-
ministrator of the Estate
of Michael O'Brien, de-
ceased.

Address: 465 Grove St.,
Jersey City, N. J.

Witness.

20

Defendant's Exhibit G.

RECEIPT FOR COMPENSATION UNDER NEW JERSEY WORKMEN'S COMPENSATION ACT.

Chapters 95 and 368. Laws of 1911.

Received of the Scandinavian American Line, of Hoboken, N. J., the sum of One hundred (\$100.) Dollars, being that portion of the weekly wages of Michael O'Brien deceased, for the period from the 28th day of April, 1917, to the 7th day of July, 1917, to which I am entitled under the above Act, by reason of the accidental death of the said Michael O'Brien on or about Dec. 23rd, 1916. I being the administrator of the goods, chattels and credits which were of said Michael O'Brien, deceased.

30

40

Dated, July 2nd, 1917.

PATRICK MCINERNEY,
Individually and as ad-
ministrator of the Estate
of Michael O'Brien, de-
ceased.

Address: 465 Grove St.,
Jersey City, N. J.

10 R. D. WOLAND,
Witness.

Defendant's Exhibit H.

WORKMEN'S COMPENSATION AID BUREAU.
Special Instructions for Each Form.
(See also General Instructions on reverse side.)

FORM No. 1.

No. 1 must be filled out and mailed to the Bureau, as soon as it is known that the disability exceeds two weeks, or that permanent injury results.

If not filed within four weeks after the accident the employer is liable to a fine of \$50.00.

20 When possible Form No. 2 should accompany Form No. 1 without detaching them from each other.

FORM No. 2.

No. 2 is an agreement for medical aid and for compensation for temporary disability covering lost time, exclusive of the first two weeks waiting period covered by medical aid.

This form should be mailed with Form No. 1 when possible. If not received within 21 days after the accident, Chapter 54 Laws 1916, directs the Bureau to place the case in the hands of the Court.

Forms No. 2 and 3 must be signed by the employer and also by the employee. If unable to write, or prevented by the injury, the employee's mark may be substituted, his name being filled in by his representative, who must sign as witness. Agreement for minors must be signed by parent or guardian also.

30

FORM No. 3.

No. 3 is a statement of compensation paid for temporary disability and an agreement for compensation to be paid for permanent injury. If there is no permanent injury, mark compensation questions concerning same with an X, complete the remaining portion of the blank and sign in the same manner as Form No. 2.

This form must be made out and mailed at the close of the temporary disability period, or as soon thereafter as the extent of the permanent injury can be determined.

Upon its receipt, if satisfactory, an approval will be mailed.

Detach at this line.

40

Defendant's Exhibit H.

.....
 (Name of employer.)
 Date of preparing this blank.....
 Number of Month.....
 Day of Month.....
 Year..... **10**

(Name of injured employee.)

Leave this blank.....
 30. Did injury result in death?
 31. State cost of medical aid rendered by you
 or your insurance carrier.
 32. Did any permanent injury result from this
 accident, such as amputation or loss or impair-
 ment of any member or function?
 33. State fully the nature of such permanent
 injury. **20**
 (Fuller statement may be placed on other side
 of blank.)

The undersigned does hereby acknowledge the
 correctness of the statements on this blank, and
 agrees to accept compensation as herein set forth.

 (Signature of employee.) (His mark.)
 If signed by mark, same must be witnessed.

.....
 (Signature of witness or guardian.) **30**

34. For how long a time was this employee un-
 able to work because of the injury? (State weeks
 and fraction thereof.)
 35. For how many weeks was compensation
 paid for temporary disability?
 36. Give total compensation for temporary dis-
 ability.
 37. For how many weeks will compensation
 be paid for amputation? **40**

Date of accident

Defendant's Exhibit H.

38. For how many weeks will compensation be paid for other permanent injury?

39. The weekly compensation will be.

40. Give total compensation for permanent injury.

10 The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation according to law, for the permanent injury stated herein.

.....
(Signature of employer.)

Form No. 3.

STATE OF NEW JERSEY.

WORKMEN'S COMPENSATION AID BUREAU

STATE HOUSE, TRENTON.

REMARKS.

20 Further statement or sketch of injury may be placed on this side.

STATE OF NEW JERSEY.

GENERAL INSTRUCTIONS COVERING REPORTING INDUSTRIAL ACCIDENTS

To The

WORKMEN'S COMPENSATION AID BUREAU,

DEPARTMENT OF LABOR.

TRENTON, N. J.

When in need of these blanks apply to the Bureau.

Report on Forms 1, 2 and 3 every accident causing loss of time of more than two weeks, or of entailing compensation. See Chap. 156, Laws 1912.

30 Minor accidents not causing over two weeks' disability or involving compensation, need not be reported on these compensation forms.

Fill in names and dates on Forms Nos. 1, 2 and 3 immediately after the accident, and preserve each carefully until it can be mailed to the Bureau.

No settlement will be approved until all three blanks are received by the Bureau.

Upon receipt of first report of fatal accident, Form No. 4, a substitute for Form No. 3, will be mailed the employer. In fatal cases Form No. 3 will not be required.

Chapter 54, Laws 1916, requires the employer to file, in reference to every accident entitling the injured to compensation, a signed statement of the settlement. This law also requires the Aid Bureau to approve every settlement or certify the case to the Court. Answer definitely and fully every question which applies, and mark other questions with an X, on all blanks, or this Bureau will be unable to approve

40

Defendant's Exhibit H.

the settlement. All cases not approved must be certified to the Court for a hearing, and the law empowers the Judge to assess the court charges and the fees of both legal advisers against the delinquent employer. This expense may be avoided by careful reporting.

Note: The Workmen's Compensation Aid Bureau will be glad to offer suggestions looking toward a settlement of any disputed or doubtful case, in order to obtain prompt compensation payment, and to prevent needless expense to the employer.

Mail reports to Workmen's Compensation Aid Bureau, State House, Trenton, N. J.

10

STATE OF NEW JERSEY.

WORKMEN'S COMPENSATION AID BUREAU
STATE HOUSE, TRENTON.

STATE OF NEW JERSEY.

WORKMEN'S COMPENSATION AID BUREAU
STATE HOUSE, TRENTON.

20

.....
(Name of employer.)

.....
(Street address.)

.....
(City or town.)

.....
(Business.)

Date of accident

Number of Month.

Day of Month.

Year.

30

.....
(Name of injured employee.)

.....
(Street address.)

.....
(City or town.)

Reports industrial accident as follows:

.....
(Place of accident.)

40

Defendant's Exhibit H.

- 1. Date of preparing this blank.....
- 2. Nature and extent of injury.
.....
.....
.....
- 10 3. Cause and manner of accident. State fully
how the accident occurred:
.....
.....
.....
- 4. (Occupation)
(Nationality.)
- 5. Sex.
- 6. Age.
- 7. Married.
- Leave this blank.....
- 20 8. Did you give written notice as per paragraph
9 of the Employers' Liability Law, that the com-
pensation provisions of section two were not to
apply to this employee?
- 9. Did you receive such notice from this em-
ployee?
- 10. Give probable date of recovery.....
- 11. If no compensation was or is to be paid the
injured, state that fact below, and give reasons
on reverse side.
.....
.....
- 30 12. Employers' Liability Assurance Corpora-
tion, Ltd.
Form No. 1. Detach at this line.
.....
(Name of employer.)
Date of preparing this blank.....
- 40 Date of accident
Number of Month.
Day of Month.
Year.

Defendant's Exhibit H.

.....

Name of injured employee.)

Leave this blank.....

20. Did the injury result in death?

21. Did the injury require medical aid?

22. Will you or your insurance carrier pay for the medical aid required by law during the first two weeks?

10

23. Give probable date of recovery.

The undersigned does hereby acknowledge the correctness of the statements on this blank, and agrees to accept compensation at the rate given.

.....

(Signature of employee.) (His mark.)

If signed by mark, same must be witnessed.

.....

(Signature of witness.)

20

24. Were the wages fixed by the output?

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

26. Give number of hours in ordinary day.

27. Give number of days in ordinary working week.

28. State the amount of weekly wages. (If fixed by output, see paragraph 23, page 16, Compensation Law.)

29. State the weekly compensation to be paid the injured.

30

The undersigned hereby affirms the correctness of the statements given, and guarantees the paying of compensation as stated herein, according to law, for temporary disability and for permanent injury, if any.

.....

(Signature of employer.)

Form No. 2.

Detach at this line.

40

Stipulation Regarding Withdrawals.

Filed July 5, 1919.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10 BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN,
RITA O'BRIEN, by their next
friend BRIDGET O'BRIEN, and
PATRICK McINERNEY, Adminis-
trator of the Estate of MICHAEL
O'BRIEN, deceased,

*Plaintiffs,**against*

20 DET FORENEDE DAMPSKIBS SELSKAB,
known as Scandinavian Ameri-
can Line, a corporation,

Defendant.

It is hereby stipulated and agreed by and between the attorneys for the parties in the above entitled action, that the plaintiffs' objections to the facts set forth in paragraphs 7, 8, 9, 10, 14 and 15 of the agreed statement of facts are withdrawn.

30

COLLINS & CORBIN,
Attorneys for Plaintiffs.
WALTER L. GLENNEY,
Attorney for Defendant.

We consent to filing as of time.

COLLINS & CORBIN,
Attorneys of Plaintiffs.

40

Defendant's Objection and Exception.

Filed July 5, 1919.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

<p>BRIDGET O'BRIEN and MARGARET O'BRIEN, KATHERINE O'BRIEN, RITA O'BRIEN, by their next friend BRIDGET O'BRIEN, and PATRICK MCINERNEY, Adminis- trator of the Estate of MICHAEL O'BRIEN, deceased,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>against</i></p> <p>DET FORENEDE DAMPSKIBS SELSKAB, known as Scandinavian Ameri- can Line, a corporation,</p> <p style="text-align: right;"><i>Defendant.</i></p>	<p>10</p> <p>20</p>
--	---------------------

An objection on behalf of the defendant is here-
by noted and exception taken to the finding of the
Trial Justice in favor of the plaintiffs and against
the defendant in the above entitled action.

WALTER L. GLENNEY,
Attorney for Defendant.

Exception allowed as ground of appeal. 30

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

We consent to filing as of time.

COLLINS & CORBIN,
Attorneys of Plaintiffs.

Postea.

Filed May 20, 1919.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">BRIDGET O'BRIEN, <i>et al.</i>,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>DET FORENEDE DAMPSKIBS SELSKAB, known as Scandinavian American Line,</p> <p style="text-align: right;"><i>Defendant.</i></p>
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This case was tried before Justice Francis J. Swayze, without a jury, upon an agreed statement of facts at the Hudson Circuit on May 3, 1919.

20 The court rendered a general verdict against the defendant and in favor of the plaintiff for \$725.50.

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

Judgment.**NEW JERSEY SUPREME COURT.**

30	<p>BRIDGET O'BRIEN and MARGARET O'BRIEN, KATHERINE O'BRIEN and RITA O'BRIEN, by their next friend BRIDGET O'BRIEN,</p> <p style="text-align: center;"><i>vs.</i></p> <p>DET FORENEDE DAMPSKIBS SELSKAB, known as Scandinavian American Line,</p>	<p>Action at Law. On Postea.</p>
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40 It is ordered that judgment be and hereby is entered in favor of plaintiff and against the de-

Judgment.

fendant for the sum of seven hundred and twenty-five dollars and fifty cents besides costs to be taxed *nisi*.

Entered May 20, 1919,

On motion of,

COLLINS & CORBIN, **10**
Attorneys.

NEW JERSEY SUPREME COURT.

BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN
and RITA O'BRIEN, by their next
friend BRIDGET O'BRIEN,

vs.

DET FORENEDE DAMPSKIBS SELSKAB,
known as Scandinavian Ameri-
can Line,

Action at
Law.
Collins &
Corbin, At-
torneys. **20**

\$725.50	Judgment entered this twentieth
56.91	day of May, A. D. nineteen hundred
—————	and nineteen for the sum of seven hun-
\$782.41	dred and twenty-five dollars and fifty
	cents damages and fifty-six dollars
	and ninety-one cents costs.

WM. S. GUMMERE, C. J. **30**

A true copy.

Enoch L. Johnson,
Clerk.

New Jersey Court of Errors and Appeals.

BRIDGET O'BRIEN, <i>et al.</i> , <i>Plaintiffs-Respondents,</i> <i>vs.</i> DET FORENDE DAMPSKIBS SEL- SKAB, known as SCANDINAVIAN- AMERICAN LINE, <i>Defendant-Appellant.</i>	}	Action at Law. On Appeal from Su- preme Court.	10
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**BRIEF OF COLLINS & CORBIN IN
 FAVOR OF THE PLAINTIFFS-
 RESPONDENTS.**

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1.

Statement of the case.

This appeal brings before this court for review a judgment in favor of the plaintiffs for \$725.50 (p. 72). By consent of the parties the case was tried before Mr. Justice Swayze without a jury on May 3, 1919, on an agreed statement of facts (p. 26, et seq.). The suit was brought to recover \$690. and interest, amounting in all to \$725.50, which the plaintiffs claimed was due on an agreement identical in form with that passed upon by this court in *Holzapfel v. Hoboken Manufacturers' R. Co.*, 92 N. J. L., 193, as we shall hereinafter show (p. 7, et seq.).

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After oral argument and the submission of briefs Mr. Justice Swayze decided in favor of the plaintiffs. He did not file an opinion, but by letter notified counsel of his decision.

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2.

Statement of the facts.

On December 23, 1916, one Michael O'Brien, plaintiff's intestate, was employed by the defendant as a longshoreman, engaged in unloading the steamship "Oscar II", which at the time was moored at the defendant's dock in the City of Hoboken (p. 27, l. 35 to p. 28, l. 10). On that day, while so employed, he was fatally injured. At the time of the accident he was in the hold of the vessel when a large steel bar slipped out of a draft of steel as the latter was hoisted out of the hold and the steel bar struck him causing the injury from which he died (p. 28, ll. 20-35).

He left him surviving his widow, the plaintiff Bridget O'Brien, and his daughters, Margaret, Katherine and Rita, all of whom are plaintiffs (p. 27, ll. 20 30; p. 22, l. 35 to p. 29, l. 10).

At the time of the institution of this suit, as well as at the present time, the daughters were minors and, therefore, the suit was brought for them by their mother as their next friend.

On January 31, 1917, the Surrogate of Hudson County granted General Letters of Administration upon the Estate of the deceased to Patrick McInerney, a brother of the plaintiff, Bridget O'Brien. On October 3, 1917, the said Surrogate granted Letters of Administration *ad pros.* upon the estate of the deceased to the said Patrick McInerney. Since the institution of this suit, and merely as a matter of caution, the said Patrick McInerney, in both of said capacities, has been made a party plaintiff by a consent order (p. 10, l. 29; p. 29, ll. 10-15; p. 31, ll. 10-20).

On March 13, 1917, (p. 36, l. 25) the widow, on behalf of herself and her children, and the defendant, conceiving the case to be one covered by the Workmen's Compensation Act of this state,

entered into an agreement in writing, which among other things mentioned the names and ages of the children, classifying them and the widow as "dependents," and stipulating for a "maximum payment" of \$10. per week and a total compensation of \$3,000. (p. 29, l. 20, et seq; p. 34, l. 30 to p. 38, l. 40). From these and other features of the agreement it may safely be inferred that it was made in view of the provisions of the act, which in case of death calls for a maximum of \$10. per week for three hundred weeks (P. L. 1913, p. 306). The agreement was submitted to, and approved by, the Workmen's Compensation Aid Bureau, established by P. L. 1916, p. 98 (p. 46, l. 40 to p. 47, l. 10).

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After entering into this agreement the defendant paid to the plaintiff McInerney, in accordance with the terms of the agreement, \$100. to cover the funeral expenses and \$260. additional in weekly payments of \$10. each, making a total payment in accordance with the terms of the agreement of \$360. (p. 30, ll. 30-40). The last of said payments of \$10. per week was made on August 24, 1917, and included weekly payments up to July 7, 1917 (p. 30, ll. 20-40). The said Patrick McInerney paid over all the moneys that he received from the defendant to the plaintiff Bridget O'Brien for the use of herself and her children (p. 32, ll. 35-40). After the last of the above payments was made, the plaintiffs demanded the other payments as they became due, but the defendant refused to make such payments because it claimed that the agreement which it had made was invalid in view of the decisions of the United States Supreme Court in *Southern Pacific Ry. Co. v. Jensen*, 244 U. S. 205, and *Clyde S. S. Co. v. Walker*, 244 U. S. 255. These cases were decided on May 21, 1917 (p. 30 l. 40 to p. 31, l. 5).

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On November 7, 1918, (p. 4, l. 20) this suit was instituted to recover the weekly instalments

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due under the agreement from July 7, 1917, to November 2, 1918. The weekly payments of \$10. for this period aggregated \$690. (p. 11, ll. 30-40). It will be noted that the amount of \$690. represents weekly payments which accrued prior to the time when the suit was instituted.

3.

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Brief of the argument.

Counsel for the appellant contends that the agreement sued upon is invalid because it was

- (a) "Simply a form executed in compliance with the Workmen's Compensation Law (Point I)."
- (b) "Without consideration (Point II)."
- (c) "Against public policy (Point IV)."
- (d) "Inequitable (Point V)."

20 and in addition, he contends "jurisdiction could not be conferred by consent (Point VI)" and "*Holzappel vs. Hoboken Manufacturers' R. Company*, 92 N. J. L. 193, is not authority in support of the plaintiffs' claim (Point III)."

The questions involved are so closely related to each other that they can all be considered together and reiteration will thus be avoided.

30 **The agreement sued on is valid. The judgment of the Supreme Court should therefore be affirmed.**

If we go back to the time when the parties came together in March, 1917, we find that the plaintiffs had the right to sue in Admiralty to recover damages for the death of their intestate. They likewise had the right to demand and sue for compensation under the Workmen's Compensation Act of this State. The plaintiffs instituted neither suit. The question whether or not the Workmen's Compensation Act was unconstitutional

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in so far as it attempted to cover persons engaged in work of a maritime nature was in doubt and that question was not settled until the case of *Southern Pacific Ry. Co. vs. Jensen*, 244 U. S., 205, was decided on May 21, 1917. They thereupon entered into the agreement which appears on Forms 2 and 4 (p. 34, l. 30 to p. 38 l. 40). This agreement is in exactly the same form as that contained in the Holzapfel case. In order to determine this fact we secured copies of Forms 2 and 4 in the Holzapfel case and they will be found in the record as part of the agreed statement of facts (p. 42, l. 15 to p. 46, l. 20).

Counsel for the defendant before and at the trial and on the argument intimated that Forms 2 and 4 did not contain the entire agreement between the parties. In order to settle that fact, counsel for the plaintiffs requested the Secretary of the Workmen's Compensation Bureau to send them a certified copy of the entire agreement (p. 33, l. 30 to p. 34, l. 20). Under date of December 27, 1918, the Secretary replied that Forms 2 and 4 comprised the entire agreement, as filed, and he enclosed certified copies of these forms (p. 34, l. 30, et seq.). Not being satisfied with this response counsel for the plaintiffs, under date of December 28, 1918, called the Secretary's specific attention of the fact that the counsel for the defendant claimed there ought to be something other than Forms 2 and 4 (p. 39, ll. 10-40). Under date of January 2, 1919, the Secretary replied that he had received the letter and "that the copies of Forms 2 and 4 which we transmitted to you contain what we understand to be the entire agreement" (p. 40, ll. 10-20). Under the agreed statement of facts it was agreed that the Secretary "if called as a witness would have testified to the facts set forth in his letters" (p. 31, ll. 25-35). This court on appeal cannot weigh the evidence and as there are no specific findings

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of fact or exceptions thereto, it must be considered as settled that Forms 2 and 4 contain the entire agreement, for the Trial Court's ruling in favor of the plaintiffs is conclusive on that question. In fact there is nothing in the evidence to refute the testimony of the Secretary of the Workmen's Compensation Bureau. In the agreement each party expressly says that he or she agrees to the terms and conditions therein contained. The defendant and its insurance carrier, The Employer's Liability Assurance Corporation, say "The undersigned hereby affirms the correctness of the statements given and guarantees the paying of compensation as stated herein according to law" (p. 36, ll. 15-20); also "The undersigned hereby affirms the correctness of the above statements and agrees to pay to the dependents named compensation as stated herein" (p. 38, ll. 10-15). The plaintiff, Bridget O'Brien, on behalf of herself and her children, agreed "The undersigned does hereby affirm the correctness of the foregoing statements and agrees to accept compensation as herein set forth" (p. 37, l. 40 to p. 38, l. 5).

Counsel for the defendant says that this agreement solemnly entered into, the parties signing in the presence of a witness, was "simply a form" and "without consideration." We submit that these contentions are frivolous.

The argument resorted to by counsel for the defendant in order to sustain these contentions is that it was intimidated and coerced into signing the agreement by reason of the fact that it received a notice from the Workmen's Compensation Aid Bureau, requesting it to make a report of the accident that caused the death of the plaintiff intestate. He says the agreement "was signed by the parties under the compulsion of Chapter 54 of the Laws of 1916 and under the threat made to the defendant by the Commissioner of Labor that a \$50. fine would be imposed for failure to comply

with Chapter 156 of the Laws of 1912 and Chapter 54 of the Laws of 1916" (p. 40 of brief), and in order to support this contention he refers to Exhibit "A" (p. 49 of brief). Examining Exhibit "A" we find that the defendant received a notice wherein it was advised by the Workmen's Compensation Aid Bureau "We fail to find report in our files from you in reference thereto (to the accident), as requested by Chapter 156 of the Laws of 1912 and Chapter 54 of the Laws of 1916." *Neither this notice nor the statutes referred to compel the execution of any agreement.*

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Assume that the accident did not arise out of and in the course of the employment of the deceased. Neither the Workmen's Compensation Aid Bureau nor the statutes referred to compel the defendant to execute an agreement and no penalty would be imposed if it did not. *The penalty is only imposed in the event that no report is made of the accident.* Again,, assume that it was the defendant's contention, before it signed the agreement, that the deceased was employed in interstate commerce and that the Federal Employers' Liability Act was therefore exclusive. Neither the notice to file a report of the accident nor the statute referred to compel the execution of any agreement. All that the statutes require is the filing of a report of the accident. It is clear, therefore, that this theory of executing an agreement under compulsion is without merit. The fact that the plaintiff, Patrick McInerney, signed receipts which recited that the money received was compensation **does not change** the fact that the agreement solemnly entered into by the parties *without resort to proceedings under the Compensation Act.*

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There can be no doubt that after the deceased met his death the plaintiffs did have a claim which might have been enforced at the time either in

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Admiralty or under the New Jersey Act. The parties came together and disposed of that claim by the agreement in question. The law is well settled that the compromise of a disputed claim made in good faith is valid whether the claim be in suit or litigation has not been actually commenced, even though it should ultimately appear that the claim was wholly unfounded; the detriment to the parties consenting to a compromise arising from the alteration in his position forms the real consideration which gives validity to the promise. The only elements of consideration necessary to such an agreement are the reality of the claim made and the *bona fides* of the parties. The court will not inquire into the adequacy or inadequacy of the consideration where the agreement is fairly and deliberately made.

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- 20 *Grant and Kelly vs. Chambers*, 30 N. J. L., 323;
 Conover vs. Stillwell, 34 N. J. L., 54, 58;
 Grandin vs. Grandin, 49 N. J. L., 508;
 Bowers Dredging Co. vs. Hess, 71 N. J. L. 327, 328;
 Worcester Loom Co. vs. Heald, 78 N. J. L., 172.

30 Furthermore, the contract in the case at bar is a bi-lateral contract, each party promising. The law has been settled that a promise for a promise is a good consideration.

40 If the defendant, or its insurance carrier, erred in its judgment as to the applicability of the Workmen's Compensation Act and now contends that had it known that the right of the plaintiffs was limited to an action in Admiralty it would not have signed this agreement, this does not relieve it from liability; and furthermore, that question should have been decided by the defendant before it made the agreement. If the defendant did not intend to perform this agreement it

should not have signed it, but on the contrary should have advised the plaintiffs to proceed to enforce their claim by suit and also it should have advised the Workmen's Compensation Aid Bureau that no agreement had been made. The defendant having signed the agreement should not be permitted to repudiate it. If the agreement had not been made the plaintiffs could have instituted suit in the Admiralty Court. The execution of the agreement by the defendant and its surety lulled the plaintiffs into the belief that the entire controversy had been concluded, and since the accident happened on December 23, 1916, the Statute of Limitations bars a proceeding at this time in the Admiralty Court for such a proceeding must be brought within two years. 10

The agreement was an arrangement of compromise and settlement made by the plaintiff, Bridget O'Brien, for herself and her children. This court, in the *Holzappel* case, with reference to this question, said: 20

"The next point made is that the agreement was signed by the mother alone, and hence created no rights in favor of the children, because of the act of 1916, *ubi supra* contemplates signature by the dependents. But this argument contains its own refutation, for the agreement in that event becomes, as to the children, an agreement of compromise and settlement at common law made for their benefit and ratified by them through a suit thereon to which they are parties plaintiff by their next friend and by a judgment in which they will be concluded. *Sites v. Eldredge*, 45 N. J. Eq. 632; 22 Cyc. 698. If they were seeking to repudiate the agreement the case might be different, but they are standing on it, and defend the judgment." 30

The foregoing quotation shows that the following statement in the brief of counsel for the defendant is unsustainable: "The plaintiffs below relied upon the recent decision of the Court of 40

Errors and Appeals in the case of *Holzappel vs. Hoboken Manufacturers' R. Co.*, 92 N. J. L. 193, but that case is not an authority for enforcing the terms of Form 4 as a common law agreement."

Counsel for the defendant further contends that there is no consideration for the agreement because the decisions of the United States Supreme Court in *Southern Pacific Ry. Co. vs. Jensen*, 244 U. S., 205 and *Clyde S. S. Co. vs. Walker*, 244 U. S. 255, hold that a compensation law enacted by a state is unconstitutional in so far as it attempts to allow compensation to a person engaged in work of a maritime nature. The answer to this contention is that this suit is not brought under or by virtue of the provisions of a Compensation Act, but merely to enforce the contractual obligation into which the defendant entered voluntarily without compulsion of any kind. An examination of Section 18 of the Workmen's Com-
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 20 that resort is unnecessary to the provisions of that act unless the parties, that is the employer and employee, cannot agree. This section provides:

"In case of a dispute over, or failure to agree upon a claim for compensation between employer and employee, or the dependents of the employee, either party may submit the claim, both as to questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided to the judge of the court of common pleas of such county as would have jurisdiction in a civil case, or where there is more than one judge of said court, then to either or any of said judges of such court, which judge is hereby authorized to hear and determine such disputes in a summary manner, and his decision as to all questions of fact shall be conclusive and binding."

40 When the parties agree and enter into an agreement there is no necessity for resorting to

the Compensation Act for redress, or relying upon its terms, for a recovery. There was no obligation, or compulsion, or duress so far as the defendant, or its insurer, was concerned, compelling them to execute the agreement. They did it of their own accord, knowing all the facts as to the nature of the deceased's employment; the fact that he was engaged in work of a maritime nature; the fact that his next of kin had a right to institute suit either in Admiralty or under the State Law, and having all of these matters in mind they deliberately entered into the agreement. They did not dispute or question the right of the plaintiffs to be paid something for the death of their intestate, and, therefore, it was unnecessary to resort to the Workmen's Compensation Act in order to compel them to pay. Indeed, having agreed on the amount that the plaintiffs were entitled to, the plaintiffs could not resort to the provisions of the act because the act only applies "in case of a dispute over or failure to agree upon a claim for compensation." It follows that not having resorted to the provisions of the Workmen's Compensation Act in order to fix the amount that the parties had agreed upon, or the nature or extent of the defendant's liability the mere fact that that Act has no application to persons engaged in work of a maritime nature does not affect the agreement that was made without resort to the act. On this question this court in the Holzapfel case said (*italics ours*);

"To this view we do not accede. The original act (P. L. 1911, p. 134) does not particularly contemplate any formal agreement, except as to the amount of compensation in the case of injuries not covered by the schedule. See foot of page 138. There is no allusion to agreements for compensation in death cases. Page 139. In fact, the agreement to compensate would seem to be that implied in the contract of hiring, or conclusively pre-

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sumed to have been made because of the statute. P. L. 1911, p. 136, par. 9; *American Radiator Co. v. Rogge*, 86 N. J. Law, 436, 92 Atl. 85, 94 Atl. 85; *Id.*, 87 N. J. Law, 314, 93 Atl. 1083. The amendment of 1913 does not recognize the practice of making an agreement after the injury and protects the claimants against an agreement to accept less than they are entitled to by permitting the statutory action in the pleas in spite of it, leaving it open to that court to decide whether a sufficient compensation was stipulated. P. L. 1913, p. 309.

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“In 1916 the Legislature went a step further and provided that no such agreement should be conclusive unless approved by the Workmen’s Compensation Aid Bureau, and that, unless such an agreement approved by that bureau was filed within 31 days after the injury, the bureau should take the matter up itself by way of settlement, or, in default of settlement, by suit. P. L. p. 97. *But nowhere in all this legislation is there any intimation that the agreement, when made and when calling for the full statutory compensation in a case where it is definitely fixed by the statute, and especially when approved by the bureau, as in this case, so that it is conclusive, shall be enforceable only in the court of common pleas.*”

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The agreement in the present case was also approved by the Workmen’s Compensation Aid Bureau (p. 47, ll. 1-10). The form of approval in the case at bar is identical with the form of approval of the agreement in the Holzapfel case (p. 48, ll. 10-20).

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In short, the agreement having been made, it is just like any other agreement and is enforceable in any court of common law jurisdiction. Otherwise the only court that could have enforced the agreement would have been the Court of Common Pleas, which is the forum provided for in the statute when the statute is to be applied in the settlement of a controversy between an

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employer and an employee, as to whether compensation should be paid.

The final answer to the defendant's contention that the agreement in question is invalid because the Workmen's Compensation Act is unconstitutional insofar as it attempts to regulate the employment of persons in work of a maritime nature, since it is inferable that the agreement was made in view of the provisions of the Act, is that the doctrine of *stare decisis* has settled that question also, in favor of the plaintiffs. The Court of Errors and Appeals in the Holzapfel case, after reciting the terms of the agreement and the manner in which the agreement was drawn, said:

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"From these and other features of the agreement it may safely be inferred that it was made in view of the provisions of the Act which in case of death calls for a maximum of \$10.00 per week for 300 weeks. P. L. 1913, p. 306. The agreement was submitted to and approved by the Workmen's Compensation Aid Bureau, established by P. L. 1916, p. 98."

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Counsel for the appellant in the Holzapfel case, at page 6 of his brief, contended that the agreement was invalid, and that the Supreme Court had no jurisdiction because, "the point is well settled that the Admiralty Courts have exclusive jurisdiction of Admiralty and Maritime matters. *Jensen vs. Southern Pacific Railroad Company*, 244 U. S., p. 205. The respondent may not deprive the appellant of this defense by instituting his action in the Supreme Court * * *. The second defense of the answer denied jurisdiction of the trial court because of the fact that the Federal Employers' Liability Act was involved. The trial court, in entering the judgment, decided that also adversely to the appellant. Wherever the Federal Employers' Liability Act applies, no State statute can impose any other or different

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liability. *New York Central Railroad Company v. White*, 243 U. S., 188. In the last cited case, and in the *Jensen* case, 244 U. S., p. 205, the United States Supreme Court holds, that wherever the Admiralty jurisdiction, or the Federal Employers' Liability Act comes into operation, a statute of any State contrary thereto, conflicts with the constitution, and to that extent, is invalid. This statement is made in both opinions just cited. As we have said, the question of jurisdiction in this State, may be raised at any time in a proceeding. The respondent bases his rights entirely upon the Compensation Act, and the Act of 1916 with regard to the Workmen's Compensation Aid Bureau, and this agreement is drawn and signed in conformity therewith. Therefore, if the statute upon which the agreement is based is unconstitutional for any reason, no rights can legally flow from such an agreement."

Examination of the answer of the defendant in the *Holzapfel* case shows that the First Defense was as follows:

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

The question of whether or not there is any consideration for the agreement was also raised in the Holzapfel case, for counsel for the defendant, in his Brief, at page 9, says:

"A proper agreement under the Act, gives rise to a right of action, cognizable by the Courts of this State; and so the agreement would give jurisdiction to the Courts of New Jersey, whereas the United States Supreme Court, has held that the statute which created the possibility of such an agreement, could not run counter to the exclusive jurisdiction of the Federal Courts. It is immaterial, what was in the minds of the parties at the time the agreement was entered into, since the paramount question is, whether the Federal Courts had jurisdiction or not, at the time of the occurrence.

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

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

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

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"It is our contention that it may be also cited to prove the illegality of this consideration."

It therefore appears that the question whether the agreement was invalid because the Workmen's Compensation Act was held unconstitutional, so

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far as it applied to cases of a maritime nature, was fully considered by the Court of Errors and counsel in the Holzapfel case, and that the Court in deciding that the Supreme Court had jurisdiction to enforce the agreement thereby held that the agreement which was made without reference to the Workmen's Compensation Act, was valid and enforceable.

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In the present suit, the mother and the children are parties plaintiff and as a matter of caution, as stated supra, the general administrator and administrator ad pros. have been made parties plaintiff. The question of parties was also passed upon by the Court of Errors in the Holtzapfel case in the following language:

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"The next point made is that the agreement was signed by the mother alone, and hence created no rights in favor of the children, because the act of 1916, *ubi supra*, contemplates signature by the dependents. But this argument contains its own refutation, for the agreement in that event becomes, as to the children, an agreement of compromise and settlement at common law, made for their benefit and ratified by them, through a suit thereon to which they are parties plaintiff by their next friend, and by a judgment in which they will be concluded. *Sites v. Eldredge*, 45 N. J. Eq. 632, 18 Atl. 214, 14 Am. St. Rep. 769; 22 Cyc. 698. If they were seeking to repudiate the agreement, the case might be different; but they are standing on it, and defend the judgment."

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We, therefore, submit that the statement in the brief of counsel for the defendant (p. 9) "*Holzapfel vs. Hoboken Manufacturers' R. Co.*, 92 N. J. L. 193, is not authority in support of plaintiffs' claim" is unsustainable. The facts in each case are identical, except that in the Holzapfel case the deceased was employed as a locomotive engineer in interstate commerce, and, therefore, the

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Federal Employers' Liability Act was exclusive,

whereas in the case at bar the deceased was employed in work of maritime nature and therefore came within Admiralty jurisdiction. The agreement in each case is identical. Each agreement received the approval of the Workmen's Compensation Bureau so as to make it conclusive and the form of the approval is identical in each case. The question of jurisdiction which counsel for the defendant stated "could not be conferred by consent" is settled by the *Holzapfel* case. Although counsel for the defendant says the agreement was inequitable and against public policy he advances no reason to support either of these contentions. It is difficult to understand how an agreement that has been voluntarily and deliberately entered into after three months' consideration of the facts by defendant company and its insurance carrier, both of whom were presumably well informed as to the nature of the obligation they were undertaking, can be said to be inequitable or against public policy. No authorities are cited supporting either contention.

The fact that counsel for the defendant contends that the agreement is a mere form, without consideration, against public policy and inequitable, and then concludes that the Supreme Court had no jurisdiction to enforce it shows that he is not certain that there is any real merit in any one of these contentions. To contend that the case of *Holzapfel v. Hoboken Manufacturers' R. Co.* is not authority for the present case is absurd.

We respectfully submit that the judgment of the Supreme Court should be affirmed with costs.

Submitted November Term, 1919.

COLLINS & CORBIN,

Attorneys for Plaintiffs-Respondents.

GILBERT COLLINS,

EDWARD A. MARKLEY,

Of Counsel.

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PHIO OF MOUNTAIN

Case of Power and Appeals

BY THE AUTHOR

Introduction	1
Chapter I. The Power of the State	10
Chapter II. The Power of the People	25
Chapter III. The Power of the Courts	40
Chapter IV. The Power of the Legislature	55
Chapter V. The Power of the Executive	70
Chapter VI. The Power of the Judiciary	85
Chapter VII. The Power of the Executive and the Judiciary	100
Chapter VIII. The Power of the Legislature and the Judiciary	115
Chapter IX. The Power of the Executive and the Legislature	130
Chapter X. The Power of the Executive, the Legislature, and the Judiciary	145

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.

Argued by
WALTER L. GLENNEY.

Court of Errors and Appeals
OF NEW JERSEY.

BRIDGET O'BRIEN and MARGARET
O'BRIEN, KATHERINE O'BRIEN,
RITA O'BRIEN, by their next
friend, BRIDGET O'BRIEN, and
PATRICK MCINERNEY, Admin-
istrator of the Estate of
Michael O'Brien, deceased,
Respondents,

against

DET FORENEDE DAMPSKIBS SELS-
KAB, known as SCANDINAVIAN
AMERICAN LINE, a corporation,
Appellant.

APPELLANT'S BRIEF.

Statement.

This is an appeal from a judgment for plaintiffs rendered by Mr. Justice Swayze after a trial without a jury (p. 72) upon an agreed state of facts (pp. 27-71).

The action was brought to enforce an alleged agreement made in accordance with the provisions

of the New Jersey Workmen's Compensation Law, which the defendant refused to recognize as such on the ground that the plaintiff's intestate died as the result of an accident incident to the loading of a ship and occurring on board the ship, and, therefore, the rights of the parties were exclusively determinable under the laws of admiralty, and the Compensation Law could have no application, and any agreement attempted to be made in such a case under the Compensation Law is void and without consideration and unenforceable.

Facts.

On December 23rd, 1916, Michael O'Brien, while in the employ of the defendant engaged in unloading a vessel at the defendant's dock at Hoboken and while in the hold of said vessel, received injuries from which he died four days later. The plaintiffs are the widow and three infant children of the deceased, together with the administrator of his estate.

On January 22nd, 1917, the Commissioner of Labor wrote to the defendant stating that he failed to find any report of the accident on file in his department, and enclosing printed blanks for such report. At the top of the said letter was a notice that \$50 fine might be imposed for failure to report the accident (see letter, Defendant's Exhibit A, p. 49, and the printed blanks enclosed, Defendant's Exhibits H and I, pp. 61, 33, 56), whereupon the defendant caused forms 1 and 2 to be filled out and filed in the office of the Commissioner of Labor, the blanks being prepared March 1st, 1917 (Defendant's Exhibits B and C, pp. 50-55).

Under date of March 12th, 1917, another printed form of the Department of Labor, prepared by the

Workmen's Compensation Aid Bureau, form 4, was made out and signed both by the defendant and by its insurance carrier, and by the widow of the deceased, her signature being witnessed by her brother, who had, on January 31st, 1917, been appointed administrator of the estate of deceased (Defendant's Exhibit D, p. 56). Form 4, which plaintiffs rely upon herein as an agreement, having been filed with the Workmen's Compensation Aid Bureau of the Department of Labor, an approval thereof was issued by the Workmen's Compensation Aid Bureau dated March 22nd, 1917 (Defendant's Exhibit E, p. 58). In the meantime, the defendant paid to the administrator of the estate of the deceased the sum of \$100 for funeral expenses, pursuant to Section 12 of the Workmen's Compensation Law (Defendant's Exhibit F, p. 59), and also began payments at the rate of \$10 per week, as compensation under Chapters 95 and 368 of the Laws of 1911 of this State, being the Workmen's Compensation Act, said payments dating from January 6th, 1917. These payments were made to the administrator of the estate of deceased and receipts for the same under the Workmen's Compensation Law were duly signed by him (Defendant's Exhibits G-1, G-2, G-3, G-4, G-5, G-6, pp. 59-64). These payments were continued until July 7th, 1917, amounting in all to \$260, together with \$100 in addition for the funeral expenses.

At that time the decisions of the United States Supreme Court in the cases of *Southern Pacific Co. v. Jensen*, 244 U. S., 205, and *Clyde S. S. Co. v. Walker*, 244 U. S., 255, had not become generally known, but when those decisions, which were handed down on May 21st, 1917 (pp. 30-31), were understood, no further payments were made by the defendant. This action is brought by the plaintiffs upon the theory that form 4, as signed by the par-

ties (Defendant's Exhibit D, p. 56), and as approved by the Workmen's Compensation Aid Bureau (Defendant's Exhibit E, p. 58), constitutes an agreement by the defendant to pay to the widow and children of the deceased the sum of \$10 per week for 300 weeks, the amount of compensation fixed by the Compensation Law, regardless of the fact that the United States Supreme Court in the *Jensen* and *Walker* cases (*supra*) has held that the Compensation Laws of the various States cannot apply to a case like this, where the deceased employee was injured while on a vessel, which he was engaged in unloading, the reason being that admiralty has exclusive jurisdiction in such cases, and the State Compensation Laws are therefore unconstitutional in so far as they undertake to apply to admiralty cases, and are against public policy.

POINT I.

The alleged agreement was simply a form executed in compliance with the Workmen's Compensation Law.

The plaintiffs contend that form 4 contains an absolute agreement by the defendant to pay to the widow of the deceased the sum of \$10 a week for 300 weeks. It is respectfully submitted that this is not so. Form 4 is a printed form prepared by the Workmen's Compensation Aid Bureau, and was signed by the parties under the compulsion of Chapter 54 of the Laws of 1916, and under the threat made to the defendant by the Commissioner of Labor that a \$50 fine would be imposed for failure to comply with Chapter 156 of the Laws of 1912 and Chapter 54 of the Laws of 1916 (Defendant's Exhibit A, p. 49). As a preliminary to

the signing of Defendant's Exhibit D, forms 1 and 2 were filled out and filed on printed forms, also supplied by the Workmen's Compensation Aid Bureau, attached to which was a set of instructions (pp. 52-53), one of the first of which was a notice that the employer was liable to a fine of \$50 if he failed to file the required reports within four weeks after the accident. Form 3 was not used for the reason that the deceased died within four days of the accident, and form 3 applies only to cases where the employee himself claims compensation, but form 4 was provided for a situation such as existed in the case at bar.

It may be argued that form 4 does not provide for payment under the Workmen's Compensation Law, but simply provides for a flat payment of \$10 a week for 300 weeks, amounting to \$3,000. It is respectfully submitted that the word "compensation" is used in several places in this form and on the back of it reference is made to Chapter 54 of the Laws of 1916, with instructions:

"Mail to Workmen's Compensation Aid Bureau, State House, Trenton, N. J." (p. 38),

with a further admonition that the form is an agreement for "compensation" and that the blank must be made out and returned to the Bureau within one month after the death of the injured to prevent certification to the Court.

Moreover, in Question 28 of form 2, as to the weekly wage of the employee, it is specifically provided:

"If fixed by output, see paragraph 23, page 16, Compensation Law" (p. 36).

Form 4 is based upon forms 1 and 2, and there certainly is no possible room for doubt that it was the clear understanding of all the parties concerned, including the Workmen's Compensation Aid Bureau, that the filling out of these forms and the issuance of the approval of the Workmen's Compensation Aid Bureau was all done under the New Jersey Workmen's Compensation Law.

Could it possibly be maintained that if the children became eighteen years of age before the end of the 300 weeks, still the widow could collect \$10 a week? Obviously it was the intention of the parties to comply with the Compensation Law and if any reduction in the rate of compensation was provided for in that law, it would be an implied term of the agreement, which is clear proof that the agreement was made under the provisions of the Compensation Law and not as a common law agreement.

Moreover, as further evidence of this fact, it will be noticed that form 4 is signed by the widow of the deceased and witnessed by her brother, whereas all of the payments made by the defendant were made to the administrator of the estate of the deceased, and were so receipted for by him, and in each of the receipts it is recited that it is a receipt for compensation under the New Jersey Compensation Act (Defendant's Exhibits F and G-1, 2, 3, 4, 5, 6, pp. 59-64). There has not, therefore, been any carrying out by the defendant of any specific agreement for the payment of money between the defendant and the widow and children, because the defendant has never paid anything to the widow and children, but has made the payments in the manner required by Section 19 of the Workmen's Compensation Law to the administrator, and the administrator has accepted these payments as being made pursuant to the Workmen's Compensation Law, and the widow has consented thereto.

POINT II.**The alleged agreement was entirely without consideration.**

It is to be noted that the widow, in signing form 4, did not undertake to release the defendant from anything in consideration of accepting compensation, but all that she undertook to do for herself, and presumably for her children, was to accept compensation as therein set forth, and affirmed as correct the statements upon which the compensation was based. This was simply a fixing by agreement of the amount of compensation due under the law in lieu of an award by the Court. Not only would the defendant be open to further proceedings in admiralty, at least by the infants, but there is no legal defense in the form of a release, or agreement to release, from the widow. There is simply an agreement on her part to take what the Compensation Law undertook to give her, and the United States Supreme Court has said that it is against public policy for the Compensation Law to give her anything. Surely, therefore, it would be just as much against public policy for this Court to compel this defendant to pay to the widow and children what the United States Supreme Court has said the State had no power to require a shipowner to pay in such a case since the obligations of the shipowner are to be fixed exclusively by admiralty laws.

The very document itself upon which the plaintiff relies sets forth that it is dependent upon the Workmen's Compensation Law. By form 2 the amount of wages is to be determined by the Workmen's Compensation Law, and the various papers are signed under the compulsion of the Workmen's Compensation Aid Bureau. When, therefore, the United States Supreme Court, by its decision in the *Jensen*

and *Walker* cases took all binding effect from the Workmen's Compensation Law, so far as admiralty cases are concerned, it took away all consideration for the undertaking made by the parties under Defendant's Exhibit D. The defendant by that instrument in writing submits to being required to pay "compensation," and the widow on behalf of herself and children agrees to accept "compensation" and the amount of "compensation" as between them is fixed. The United States Supreme Court having said that in admiralty cases there can be no such thing as "compensation," there is no consideration left for either promise contained in Defendant's Exhibit D, and, therefore, there can be no validity to such a document as a binding agreement. Obviously the widow and children would be free to sue in admiralty in entire disregard of the alleged agreement since admiralty jurisdiction is exclusive. Why, then, is the defendant bound by an obligation which is in no wise binding upon the plaintiffs?

In *Cooley on Constitutional Limitations*, 7th Ed., 259, it is stated:

"When a statute is adjudged to be unconstitutional it is as if it had never been. Rights cannot be built up under it; *contracts which depend upon it for their consideration are void*; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made."

In *12 Corpus Juris*, 801, it is stated:

"As a general rule, all acts done under an unconstitutional law are void and of no effect, but acts that are merely incidental to an unconstitutional legislative enactment, it seems, are valid."

The alleged agreement in the case at bar is simply a compliance with the provisions of the Workmen's Compensation Law, and is, therefore, an act done squarely under the provisions of that law, and as such is void and of no effect.

The alleged agreement was void at the time of its making, even though the *Jensen* case was not decided until much later. This has been decided in *Stockton v. Dundee Mfg. Co.*, 22 N. J. Eq., 56, in which the Chancellor said:

“A change by decision is retrospective, and makes the law at the time of the first decision as it is declared in the last decision, as to all transactions that can be reached by it.”

POINT III.

***Holzappel v. Hoboken Manufacturers R. Co.*, 104 Atl., 209, is not authority in support of plaintiffs' claim in this case.**

As shown in Point I, all the dealings between the defendant and the various plaintiffs were in accordance with the provisions of the Workmen's Compensation Law of New Jersey, and it is clear that there never was any intention on the part of either side to make a common law agreement. The plaintiffs below relied upon the recent decision of the Court of Errors and Appeals in the case of *Holzappel v. Hoboken Mfrs. R. Co.*, 104 Atlantic, 209, but that case is not an authority for enforcing the terms of form 4 (Defendant's Exhibit D) as a common law agreement. In that case the deceased was engaged in interstate commerce. The same forms, apparently, were filled out by the various parties (Plaintiffs' Exhibits P-5, P-6). The questions

raised in the Court of Errors and Appeals were simply as to whether a judgment could be given for weekly payments, and whether the Supreme Court had any jurisdiction to enforce the alleged agreement, and whether the mother could enforce the agreement for the benefit of the infant children. The Court of Errors ruled that the "installment" judgment could not be supported under the common law, although the Supreme Court had jurisdiction to consider the case. It also held that the mother could represent the children in enforcing the alleged agreement, but the Court distinctly stated:

"If they were seeking to repudiate the agreement, the case might be different."

Therefore, in the *Holzappel* case the questions of the validity of the Workmen's Compensation Law and of public policy were not litigated, so that that case is not an authority on the questions now presented in this case.

POINT IV.

To sustain the plaintiffs' alleged cause of action would be against public policy.

The United States Supreme Court in *Southern Pacific Co. v. Jensen* (*supra*) squarely holds that it is one of the principles of fundamental law in this country that the General Maritime Law as accepted by the Federal courts constitutes part of our national law applicable to matters within the admiralty and maritime jurisdiction, and that exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction is vested in the Federal

district courts "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it," and that the remedy which the Compensation Statute attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court, and is not saved to suitors from the grant of exclusive jurisdiction, and also that the remedy afforded by the Compensation Law is not consistent with the policy of Congress to encourage investments in ships manifested under the Acts of 1851, which declare a limitation upon the liability of their owners. Therefore it is not only a matter of remedy, but of public policy, when the plaintiff asks this Court to compel the defendant to pay compensation in accordance with the State Workmen's Compensation Law. It may be argued that public policy has nothing to do with the mere enforcement of an agreement to pay a fixed amount of money each week for 300 weeks. It is respectfully submitted that to enforce such an alleged agreement would be simply another way of carrying out a provision of a law which the Supreme Court of the United States has held violates the Federal Constitution, and is contrary to the public policy of this country. It certainly cannot be seriously contended that the alleged agreement was not signed by the parties solely in compliance with the provisions of the Workmen's Compensation Law, for both externally and internally the paper thus signed (Defendant's Exhibit D, p. 56) and the papers signed as a preliminary to it (Defendant's Exhibits B and C, pp. 50, 51); and the receipts given for payments made in accordance with it (Defendant's Exhibits F and G-1, 2, 3, 4, 5, 6, pp. 59-64) all relate directly to the Workmen's Compensation Law of the State of New Jersey, and the original form 4 relied upon by the plaintiffs is to be

found at the present time filed in the office of the Workmen's Compensation Aid Bureau, and has been acted upon by that bureau, and its approval thereof has been duly issued (Defendant's Exhibit E, p. 58).

It may be argued that payments have been made pursuant to this alleged agreement since the decisions in the *Jensen* and *Walker* cases were handed down by the Supreme Court, but it is respectfully submitted that the payments were made to and receipted for by the administrator, who was not a party to the alleged agreement. That in no way renders the alleged agreement valid or frees it from the taint of being against public policy. In this respect this case is very similar to the case of *Coon v. Kennedy*, 91 N. J. L., 100—affirmed by the Court of Errors and Appeals in 91 N. J. L., 598. In that case, a proceeding was had under the Workmen's Compensation Law and an award made. The deceased was drowned while on a tug in New Jersey waters by the sinking of the tug. No question was raised in the Common Pleas Court as to the jurisdiction of the Court, but when the case reached the Supreme Court, the *Jensen* case having apparently in the meantime been decided, the question was then raised for the first time, and the Supreme Court said:

“The doctrine that a party need not be heard as to a question which should have been, but was not, raised in an intermediate Court of Appeal, is subject to these limitations, namely: first, where the question goes to the jurisdiction of the subject matter (*Dodd v. Una*, 40 N. J. Eq. 672, 713), and second, where a question of public policy is involved (*Massachusetts National Bank v. Shinn*, 163 N. Y. 360).”

The Court of Errors, in affirming the decision of the Supreme Court, which gave judgment for the defendant, said:

“We concur in the result reached by the Supreme Court that the Federal jurisdiction over the case presented was exclusive, and for the reasons given in the opinion of that Court.”

See *Doey v. Howland Co.*, 224 N. Y., 30.

In the case at bar, the signing of form 4 and the issuance of an approval thereof had the same effect as the making of an award, since it is provided by Section 4, Chapter 54, of the Laws of 1916, that when the approval of the Bureau is issued, the arrangement between the parties becomes conclusive, but inasmuch as the United States Supreme Court has declared that the law under which the alleged agreement was executed is invalid and is against public policy, even though payments were made by the defendant, they were made pursuant to a law which has been declared to be against public policy, and the opportunity to present such an objection is now for the first time presented in this action brought to enforce the carrying out of obligations attempted to be imposed by a law which is invalid and against public policy. Therefore, this Court should recognize such a defense, and should not lend its aid to the carrying out of a law which is unconstitutional and against public policy, nor does the amendment of the Federal Judiciary Act (Sections 24 and 256), so as to permit the application of said Workmen's Compensation Laws in admiralty cases, assist the plaintiff in this case, as it is squarely held in *Coon v. Kennedy* (*supra*) that that amendment which took effect October 6th, 1917, is not retroactive and cannot support any claim for compensation based on an accident which

occurred before its enactment, and the accident in this case occurred December 23rd, 1916.

POINT V.

It would be inequitable to permit plaintiffs to recover in this action.

It must be conceded that admiralty had exclusive jurisdiction over all civil actions based upon an accident to the deceased such as in the case at bar. Nothing could deprive admiralty of that jurisdiction and the Workmen's Compensation Laws which attempted to interfere with such exclusive jurisdiction were held to be unconstitutional and against public policy.

Three of the plaintiffs in this case are infants, and surely anything which their mother might have seen fit to do without being duly appointed by the Court to represent the infants should not deprive the infants of their legal rights. It will be noted in the *Holzappel* case (*supra*) that the Court of Errors held that the mother was authorized to enforce the rights of the infants, but distinctly said:

“If they were seeking to repudiate the agreement, the case might be different.”

If, therefore, after they had received the \$3,000 provided for under the Workmen's Compensation Law, the infants saw fit to have an action instituted on their behalf in the admiralty courts, surely no payments made in accordance with the terms of an unconstitutional State Law could deprive the infants of their right to relief in admiralty. The defendant, therefore, might well be required to pay twice. Moreover, in this particular case, the ages

of the children do not happen to cause any change in the rate of compensation during the period of payment, but, in many cases, it might well be that before the 300 weeks expire one or more of the children might become eighteen years of age, and under the provisions of the Workmen's Compensation Law that would reduce the rate at which compensation is payable, yet the defendant would have no relief under the Workmen's Compensation Law to have the payments thus reduced if the alleged agreement is to be enforced without regard to the Workmen's Compensation Law, as it must be, if at all, since that law is unconstitutional, void and against public policy. From every point of view, therefore, it is inequitable and contrary to public policy for the plaintiffs in this case to recover from the defendant the compensation provided for by the Workmen's Compensation Law simply because, under the threat of a fine by the Department of Labor in this State, the defendant signed the printed forms provided by the Department of Labor and made certain payments in accordance with the provisions of the Compensation Law.

POINT VI.

Jurisdiction could not be conferred by consent.

In *Oakley v. Aspinwall*, 3 N. Y., 547, at p. 552, the Court said:

“But where no jurisdiction exists by law it cannot be conferred by consent—especially against the prohibitions of a law, which was not designed merely for the protection of the party to a suit, but for the general interest of justice.”

In *Matter of Caffrey*, 52 A. D., 264, at p. 270, the Court said:

"I need not dwell upon the danger of permitting parties to create tribunals, thereby recognizing that private compact may have the force of public statute. Private judgment might thus reconstitute the judicial system of the State and confer upon inferior courts or bodies powers that were never contemplated when they were authorized, but which were in effect withheld by the wish or wisdom of the people."

See

McClaghry v. Deming, 186 U. S., 49, at p. 66.

As has been pointed out, the United States Supreme Court in the *Jensen* case has said that it is against public policy for the states to award compensation in admiralty cases, and jurisdiction over such cases has been specifically withheld from the State courts, therefore the mere fact that the defendant complied with the State Law in order to avoid a penalty being imposed upon it and filled out the necessary forms and signed the paper in which it agreed to pay "compensation as stated herein," does not confer upon this Court any jurisdiction to enforce the continuance of payments of "compensation as stated herein," because, as laid down in the foregoing citations, no such jurisdiction can be conferred by consent.

Moreover, in *Levison v. Illinois Surety Co.*, 222 N. Y., 280, it has recently been held by the Court of Appeals of New York that where a surety bond has been issued pursuant to an invalid law, it was not binding, the Court saying:

“Such an arrangement and agreement would only be valid and binding upon the parties because of its being entirely separate from and independent of the prohibition contained in the statute quoted. No such separate and independent agreement was executed in this case.”

In *Norton v. Shelby Co.*, 118 U. S., 425, at p. 442, the Court says in regard to an unconstitutional statute:

“It confers no rights; it imposes no duties; it affords no protection; * * * It is, in legal contemplation, as inoperative as though it had never been passed.”

It is respectfully submitted that had the parties in the case at bar, in compromise of all rights, entered into an agreement whereby the widow for herself and her children undertook to release the defendant from all liability of every sort, in consideration of the defendant paying to the widow the sum of \$10 a week for 300 weeks, the plaintiffs might then maintain that there was a valid compromise of all liability, both in admiralty and under the common law, and such an agreement might well be held to be binding and enforceable, but, as pointed out, the parties in signing Defendant's Exhibit D did nothing more than, in the one case, agree to accept and in the other case agree to pay the amount of compensation payable under the Workmen's Compensation Law of New Jersey. The agreement, therefore, such as it was, was made absolutely in pursuance of the provisions of the Compensation Law, and was not in any sense a binding common law agreement.

POINT VII.

The judgment for plaintiffs should be reversed and the complaint dismissed, with costs.

Respectfully submitted,

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No. 217 East 7th Street,
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[16940]