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Affidavit for Rule to Show Cause.

AFFIDAVIT FOR RULE TO SHOW CAUSE.

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

MARGARET BEDERSKI, of full age, being duly sworn according to law, on her oath deposes and says: 10

I am the widow of Peter Bederski, who died on May 11, 1923, while a member of the Police Department of the City of Newark. I married Mr. Bederski, my deceased husband, in the year 1914 and there were born of our marriage three (3) children, Evelyn Bederski, who is now two (2) years old, Agnes Bederski, who is now ten (10) years old, and Gertrude Bederski, who is now seven (7) years old. These children reside with me and I am supporting them and am their sole support. I lived with my husband continuously from our marriage up to the time of his death and was living with him at the time of his death. 20

My husband, Peter Bederski, was appointed a member of the Police Department of the City of Newark as a patrolman in the year 1920 and up to the time of his death there was deducted, pursuant to the statute known as the Pension Act of 1920, two *percentum* (2%) of his salary and all deductions provided for by Chapter 160 of the Laws of 1920 relating to policemen's and firemen's pensions, and upon his death on May 11, 1923, such payments and deductions had been fully made and deducted. His salary at the time of his death was \$2,200.00 per year. 30

Said Pension Act provides, in part, as follows: (Paragraph 3, Chapter 160, Laws of 1920, page 326):

“The widow or children or sole dependent parent of any member of the Police or 40

Affidavit for Rule to Show Cause.

Fire Department, having paid into the fund the full amount of his annual assessment or contributions, who shall have lost his life in the performance of his duty, or who shall die from causes other than injuries received in the performance of duty, shall receive a pension equal to one half of the salary of such member at the time of his death, not exceeding \$1,000.00; provided, however, that in case of a widow and children such pension shall be paid to the widow for use of herself and the children, if any, and in case of children and no widow, then such pension shall be paid to such of the children who have not attained the age of sixteen (16) years, in equal shares, provided there are three (3) or more children; if there are two (2) children, they shall be paid \$20.00 each monthly; if one (1) child, \$25.00 monthly; and in case there is no widow and no children under the age of sixteen (16) years, then such pension shall be paid to the sole dependent parent of such deceased member; and provided further that no widow shall be entitled to a pension who shall have married any member after he shall have attained the age of fifty (50) years; and provided further that if any widow entitled to a pension as aforesaid remarry, then such pension shall cease and shall not be paid to such widow or her children."

When I married my husband, he was twenty-two (22) years of age. I have not remarried.

Under said Statute, the administration of the pension fund created thereby, is vested in a board known as the Policemen's and Firemen's

Affidavit for Rule to Show Cause.

Pension Board, consisting of five (5) members and to this board on July 5, 1923, I made formal written application for the pension to which I am entitled. A special meeting of said board was held on December 13, 1923, to which I submitted evidence of the foregoing facts at which meeting no definite action was taken, but the matter adjourned subject to the call of the chair and at numerous successive meetings of said Policemen's and Firemen's Pension Board, further discussion of the matter took place with no decision being rendered until today, June 30, 1925, at a special meeting of said board, when action was finally taken upon my application, the board voting to reject the same.

My children and myself are in dire need of financial aid and I believe that pursuant to said statute and by reason of the payments made by my husband, we are entitled to said pension and I am advised that no other remedy exists to enforce my rights except by aid of this Honorable Court by Writ of Mandamus.

Therefore, deponent prays that a Writ of Mandamus may issue out of and under the seal of this Honorable Court, directed to the said Policemen's and Firemen's Pension Board, commanding and enjoining it to grant, allow and pay to me, for the benefit of myself and said infant children, a pension of \$1,000.00 per year, pursuant to the statute in such case made and provided.

MARGARET BEDERSKI.

Sworn and subscribed to before me this 30th day of June, A. D. 1925.

ALBERT E. MCGEEHAN,
A Notary Public of New Jersey.

Rule to Show Cause.

RULE TO SHOW CAUSE.

New Jersey Supreme Court

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <i>vs.</i> THE POLICEMEN'S AND FIRE- MEN'S PENSION BOARD OF THE CITY OF NEWARK.	}	<i>On Motion for Mandamus. Rule to Show Cause.</i>
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Upon reading and considering the affidavit filed in the above-stated cause:

20 It is on this first day of July, A. D. 1925, ORDERED by the Court that the said Policemen's and Firemen's Pension Board of the City of Newark, defendant, do show cause before this Court, at the State House, in the City of Trenton, on Tuesday, the sixth day of October, 1925, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, why a peremptory or alternative writ of mandamus shall not be issued out of and under the seal of this court, commanding and enjoining it, the said Policemen's and Firemen's Pension Bureau of the City of Newark, to grant and allow and pay to Margaret Bederski, the widow of Peter Bederski, deceased, for the benefit of herself and her children, a pension out of and from the Policemen's and Firemen's Pension Fund of \$1,000.00 per year, from the date of death of said Peter Bederski who died on May 11, 1923, while a member of the Police Department of the City of Newark;

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Rule to Show Cause.

And it is further ordered that both parties hereto, have leave to take affidavits and that the evidence and stipulations heretofore taken and entered into on the application before said board may be submitted and used before the court at said hearing.

Let this rule be entered in the minutes.

WM. S. GUMMERE,
Chief Justice.

On motion of
JOHN W. MCGEEHAN, JR.,
Attorney of Relator.

Due and legal service of a true copy of the within Rule to Show Cause is hereby acknowledged as of time this eleventh day of September, 1925.

JEROME T. CONGLETON,
Attorney for Policemen's and Firemen's
Pension Board of the City of Newark.

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Application for Pension.

APPLICATION FOR PENSION.

Newark, N. J., July 5, 1923.

To the Commissioners of Policemen's and Firemen's Retirement and Pension Fund of the City of Newark.

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GENTLEMEN:

The undersigned, widow of Peter Bederski, who at the time of his death was a member of the Division of Police, in the Department of Public Safety, hereby makes application for a pension, in accordance with Chapter 160 of the Laws of 1920. The said decedent at the time of his death held the rank of patrolman in said Division of Police, and was receiving an annual salary of \$2,200.00 per annum.

20

Name Margaret Bederski.

Address

Name of applicant, Margaret Bederski, widow of Patrolman Peter Bederski.

Date of appointment, September 16, 1919.

Date of birth, April 9, 1892.

Date of death, May 11, 1923—killed.

Date of marriage, June 16, 1914. Wife's name, Margaret Dunn.

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Age of applicant at time of marriage, nineteen years.

Number of children, three.

Name, Evelyn, born April 16, 1923.

Name, Gertrude, born February 12, 1916.

Name, Agnes, born, September 9, 1914.

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REPORT OF COMMITTEE.

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Committee.

Minutes of Special Meeting of Board.

MINUTES OF SPECIAL MEETING.

Minutes of Special meeting of the Policemen's and Firemen's Pension Board, fixed by motion of the Commission for the hearing of the application of Mrs. Margaret Bederski, widow of Policeman Peter Bederski, for a pension under the Pension Act of 1920, notice of which was served on the applicant, Mrs. Margaret Bederski, who appears before the Pension Board at the City Hall, Newark, N. J., on Thursday, December 13, 1923, at 10:30 A. M.

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Present.

Mayor Breidenbach.

Commissioners.

Mr. Donnelly, President.

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Mr. Long, Representing Police Department.

Mr. Koppe, Representing Fire Department.

Mr. Curran, Secretary.

Jerome T. Congleton, Esq., City Counsel.

John W. McGeehan, Jr., Esq., representing Mrs. Bederski.

MRS. MARGARET BEDERSKI, sworn.

30

Direct examination by Mr. McGeehan.

Q Mrs. Bederski, you are the widow of Peter Bederski? A I am.

Q And when did you marry Mr. Bederski? A 1914; nine years ago.

Q Are there any children of that marriage? A Yes, sir.

Q How many? A Three.

Q What are their names? A Evelyn, Gertrude and Agnes.

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Minutes of Special Meeting of Board.

Q How old are those children? A Evelyn is seven months old; Agnes is nine years old and Gertrude seven years old.

Q Do those children live with you now? A Yes, sir.

Q Are you supporting them? A Yes, sir.

10 Q Were you living with your husband on May 11, 1923, A Yes, sir.

Q Is that the date that he died? A Yes, sir.

Q Were you with him at the time of his death? A I was.

Q At the time Mr. Bederski died, what was his business? A A patrolman.

Q Of the Newark Police Department? A Yes, sir.

20 Q How long had he been such patrolman? A Four years.

Mr. McGeehan: I assume it is admitted that the deductions from his salary were made sufficient to comply with the statutes.

30 Mr. Congleton: We are willing to admit that Mr. Bederski was appointed a member of the Police Department September 16, 1919. I assume the secretary has checked these dates.

Mr. Curran: They are correct, Mr. Congleton, according to the records of the Police Department.

40 Mr. Congleton: That he died on May 11, 1923; that he left him surviving, his widow, the present applicant, and three children whose names and ages appear in the formal application blank filed with the Commission; that the deductions provided for by Chapter 160 of the Laws of 1920 re-

Minutes of Special Meeting of Board.

lating to the Police and Firemen's Pension Fund have been made from his salary. That is true, Mr. Secretary, deductions had been made right along?

Mr. Curran: Two per cent., according to the law, yes.

Mr. Congleton: We admit those facts. 10

Mr. McGeehan: I think that is all we have to offer.

Cross examination by Mr. Congleton.

Q Mrs. Bederski, you stated that you were with your husband when he died? A Yes, sir.

Q And about what time of the day or morning was that? A When he was shot? 20

Q No, when he died; when you were at the hospital with him, I am referring to, first? A Quarter after ten or half-past ten in the morning.

Q How long had you been with him before that? A I had been with him all the while since he came home from four o'clock in the morning.

Q He came home at four o'clock in the morning May eleventh? A Yes, sir. 30

Q And was shot? A Yes, sir.

Q When before four o'clock in the morning had you seen him last? A Eight o'clock in the evening.

Q Eight o'clock the previous evening? A Yes, sir.

Q And at that time he was in good health? A Yes, sir.

Q And he left you to report to Police Headquarters, so far as you knew? A Well, it was his night off. 40

Minutes of Special Meeting of Board.

Q And he didn't go out in uniform? A No, sir.

Q Did he say to you where he was going? A No, sir.

By Mr. Long.

10 Q I wanted to ask Mrs. Bederski this question. Did your husband tell you that he had an appointment with somebody or was going to meet somebody? A Yes, that is what he said.

Q Did he say who he was going to meet? A No, sir.

Q He said he had an appointment? A Yes, sir.

Q But didn't say with whom? A No, sir.

20 Q He just simply said he had an appointment? A Yes, sir.

Q Did he say at what time he had the appointment? A No; he left the house at eight.

Q To keep an appointment? A Yes, sir.

By Mr. Donnelly.

Q Did he leave the house accompanied by anybody? A No, sir.

Q He was all alone? A Yes, sir.

30 Q He didn't say he had any dates; to meet anybody in particular; he was going to work? A No, he said he had an appointment.

Re-direct examination by Mr. McGeehan.

Q Mrs. Bederski, did you know what your husband's destination was on the night he went where he was going? A No, sir, I did not.

40 Q Did you know after he returned home where he had been shot? A No, sir.

Minutes of Special Meeting of Board.

Q Did you know after he returned home with whom he had been? A No, sir.

Q Did you have any knowledge of the purpose of your husband in making or keeping the appointment that he mentioned to you? A No, sir.

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By Mr. Congleton.

Q After your husband came home at four o'clock in the morning shot, did he tell you how or where he had been shot? A No, sir, he said, "I don't know."

Q Nor at any time before he died he did not tell you? A No, sir.

By Mr. McGeehan.

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Q You say he did not say when he returned home where he had been shot or how? A No, sir.

Q Did he at any time subsequent to the time after the police or after the priest arrived say anything about whom he thought shot him? A Well, then I begged him because I thought he would not live and I said, "Now, why don't you tell me; don't you know who done it?" and he said, "I think a policeman." That is when he knew he was going to die.

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By Mr. Long.

Q He didn't mention why he thought the policeman shot him? A No, sir.

Q Or as to any of the circumstances at all of the shooting? A No, sir.

Q Nothing more than just the words he thought a policeman shot him? A Yes, sir.

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Minutes of Special Meeting of Board.

10 Mr. Congleton: Mr. Commissioners, after hearing Mr. McGeehan's statement as to what he understands to be the evidence, I think perhaps it would be better for all concerned if we took the testimony of Dresch and Hetschel anew in this proceeding, and if agreeable to you, Mr. McGeehan and I will go to Trenton at a time agreeable to us with a stenographer and have these two men examined. Of course, if you do not agree to go along, too, that would be your privilege, of course, but I think perhaps it would be better if we simply took their testimony. It would be limited to this one question and there would not be all of this other outside matter that we do not need.

20 A motion was made that the City Counsel and Mr. McGeehan, counsel for Mrs. Beder-ski, examine the witnesses at Trenton, which was duly seconded by Mr. Long and carried.

30 Mr. McGeehan: Let the record show my objection to such testimony. I object to the offer of the corporation counsel introducing in evidence any proof tending to show the manner in which the decedent met his death, or proof tending to show that at the time he met his death he was engaged in an unlawful act, upon the ground that under the statute known as the Pension Act of 1920, such circumstances are immaterial as the statute gives to the family of a deceased officer who died from any cause the right to a pension.

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Minutes of Special Meeting of Board.

A motion was made to overrule the objection of Mr. McGeehan, duly seconded and carried.

Mr. McGeehan: I now ask an exception to the ruling of the Board.

Mr. Congleton: It is agreed by Mr. McGeehan, attorney for the applicant, and by myself that we will take the testimony of Dresch, Hetschel and Schaeffer, by consent, at Trenton, and that it be submitted in the form of depositions to the Commission.

(Adjourned subject to the call of the Chair.)

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*Stipulations and Admissions.***STIPULATIONS AND ADMISSIONS.**

The following admissions and stipulations were entered into and acquiesced in by the Board and the petitioner at a further hearing before
10 the Board on June 23, 1925.

Mr. McGeehan.

“My objection stands to the materiality and competency of the evidence, but in order to save time, I am willing to admit that if certain witnesses who testified in previous criminal trials were called, they would testify to the following state of facts—and I consent that this stipulation take the place of and have the same effect as
20 if such persons had actually testified before this Board to this following state of facts, subject to its relevancy to this issue;

That on the early morning of May 11, 1923 (the date of death of Peter Bederski), he, in company with several other persons, including Adam Dresch, Charles Hetschel, Louis Gimmelsstob and Dan McGowan, met for the purpose of going to a warehouse known as the Bernstein Warehouse on Jelliff avenue, Newark, N. J.,
30 where certain whiskey, understood by such witnesses to be owned by Peter Bederski, was stored. While in said warehouse a policeman, by the name of Louis Thomas, entered and while said persons were within the warehouse several shots were fired therein. Subsequently, and about an hour or two hours after this occurrence, Peter Bederski, was found upon the porch of his home with a bullet wound in his body, from the effects of which he died. It is not known
40 to any of the persons who could be called as

Stipulations and Admissions.

witnesses whether or not the bullet wound found upon him was inflicted in the warehouse.

In addition to the foregoing, it is further admitted that at the criminal trials one of the owners of the warehouse testified that Peter Bederski did not have any whiskey, owned by him, stored in said warehouse, and that he had entered said premises without permission of the owner.”
10

Mr. Congleton.

“It is stipulated and admitted that at the time of his death, Peter Bederski was a member of the Police Department of the City of Newark, receiving a salary of \$2,200 per year; that he was not under suspension at such time or under charges nor were any charges at any time preferred against him in the Police Department which were pending at the time of his death; that he was not dismissed from the Police Department at any time; that he was never tried or convicted of any offense alleged to have been committed on the night of his death; that his wife, the petitioner, did not marry him after he had attained the age of fifty (50) years and that his widow has not remarried.
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It is hereby stipulated and agreed that the foregoing stipulation and admissions be, together with the testimony and proceedings at the hearings, submitted to the Supreme Court as the facts in and record of the proceedings herein.
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JOHN W. MCGEEHAN, JR.,
Attorney for Applicant.

JEROME T. CONGLETON,
Attorney for Policemen's and Firemen's
Pension Board of the City of Newark.
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Decision of Board.

DECISION OF BOARD.

Newark, N. J., June 30, 1925.

Minutes of an adjourned meeting of the Policemen's and Firemen's Retirement and Pension Fund held on the above date in the office of
10 Mayor Thomas L. Raymond.

Present—

Thomas L. Raymond, Mayor.

John Howe, Director of Revenue and Finance.

Captain John A. Byram, representing the Fire Division.

Chief Michael T. Long, representing Police Division.

John H. Donnelly, President Pension Fund.

20 Meeting called for the purpose of considering the application of Margaret Bederski, widow of Peter Bederski, for pension by reason of the death of her husband.

30 Mr. John W. McGeehan, representing the applicant, argued in favor of the granting of the application, and Mr. Jerome T. Congleton, Corporation Counsel, representing the Fund, presented his argument. After a full discussion and consideration of the testimony and stipulations heretofore entered into, a motion was duly made by Chief Long, seconded by Mr. Howe, and unanimously adopted, that the application for a pension made by Mrs. Bederski be denied.

Secretary's Certificate.

CERTIFICATE.

I, THOMAS CURRAN, hereby certify that the foregoing is a true extract from the minutes of a meeting of the Policemen's and Firemen's Retirement and Pension Fund, held on June 30, 1925, insofar as it relates to the application of
10 Margaret Bederski for pension by reason of the death of her husband, Peter Bederski.

THOMAS CURRAN,
Secretary.

Grounds and Reasons.

GROUND AND REASONS.

NEW JERSEY SUPREME COURT.

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <i>vs.</i> THE POLICEMEN'S AND FIREMEN'S PENSION BOARD OF THE CITY OF NEWARK.	} <i>On Motion for Mandamus. Grounds and Reasons.</i>
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The prosecutor presents the following grounds and reasons why a writ of mandamus should issue to the Policemen's and Firemen's Pension Board of the City of Newark, commanding and enjoining it, the said Policemen's and Firemen's Pension Board of the City of Newark, to grant and allow and pay to Margaret Bederski, the widow of Peter Bederski, deceased, for the benefit of herself and her children, a pension out of and from the Policemen's and Firemen's Pension Fund of \$1,000 per year from the date of death of said Peter Bederski, who died on May 11, 1923, while a member of the Police Department of the City of Newark:

1. Because the said Board was without authority and violated the provisions of the Statute, being Paragraph 3, Chapter 160, Laws of 1920, in refusing and failing to grant and pay to the said Margaret Bederski, said pension.
2. Because the said Margaret Bederski was, on the date of death of her said husband and is now entitled to said pension from said fund under the control of the respondent and from

Grounds and Reasons.

the respondent, Policemen's and Firemen's Pension Board of the City of Newark, pursuant to and under the provisions of said statute.

JOHN W. MCGEEHAN, JR.,
Attorney for Prosecutor.

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Due and legal service of the within Grounds and Reasons on order to show cause why Writ of Mandamus should not issue, is hereby acknowledged this fourteenth day of September, 1925.

JEROME T. CONGLETON,
Attorney for Respondent.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Bederski v. Policemen's and Firemen's Pension Board of City of Newark. (No. 229.)

(Supreme Court of New Jersey. July 14, 1926.)
(Syllabus by the Court.)

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Municipal corporations—Widow of policeman, shot while off duty, held entitled to pension, though he may have been engaged in unlawful enterprise at time (P. L. 1920, p. 324).

20

B., a policeman of the City of Newark, died on May 11, 1923, from a revolver shot while off duty. His widow applied to the pension board of the city of Newark for a pension. The application was denied. Held, that under chapter 160 of the Laws of 1920 (P. L. 1920, p. 324) the widow was entitled to a pension under the provisions of said act, even though B may have been engaged in an unlawful enterprise at the time of his death.

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Proceeding by the State, on the relation of Margaret Bederski, for mandamus to be directed to the Policemen's and Firemen's Pension Board of the City of Newark. On rule to show cause why a peremptory or alternative writ of mandamus should not issue. Peremptory writ awarded.

Argued January Term, 1926, before Trenchard and Katzenbach, *JJ.*

John W. McGeehan, Jr., of Newark, for relator.
Jerome T. Congleton and Chas. M. Myers, both of Newark, for respondents.

KATZENBACH, *J.* This case is before us upon
40 a rule to show cause why a peremptory or alter-

Opinion of Supreme Court.

native writ of mandamus should not issue to command the policemen's and firemen's pension board of the city of Newark to grant to Margaret Bederski, widow Peter Bederski, for the benefit of herself and children, a pension of \$1,000 per year from the date of the death of Peter Bederski, who was a policeman in the employ of the city of Newark. Bederski died on May 11, 1923.

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The record contains the application of Mrs. Bederski for the pension, the minutes of the policemen's and firemen's pension board relative to the application, and the testimony covered by the applicant. The record also contains certain stipulations and admissions made by counsel for the respective parties. From the record, as thus constituted, the following facts appear: Peter Bederski was appointed a member of the police department of the city of Newark on September 16, 1919. He continued to be a member of the department until his death on May 11, 1923. His salary at the time of his death was \$2,200 per year. He was not under suspension or under any charges at the time of his death. At no time during his service had any charges been preferred against him. He had not married the petitioner after he had attained the age of 50 years. His widow has not remarried. He left a widow and three infant children, aged 9 years, 7 years, and one month, respectively. All deductions from his salary provided for by chapter 160 of the Laws of 1920, relating to the policemen's and firemen's fund, had been made up to the time of his death.

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The following are the facts relating to the death of Bederski: On May 10, 1923, at 8 P. M., when he was not in uniform or on duty, he left his home. He did not tell his wife where
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Opinion of Supreme Court.

he was going. He was found upon his doorstep at 4 o'clock in the morning of May 11, 1923, suffering from a revolver shot, from which he died at about 10:30 a. m. on that day. Bederski on the morning of May 11, 1923, was in the company of Adam Dresch, Charles Hetschel, Louis Gimmelstob, and Dan Magowan. They had met for the purpose of going to a warehouse, known as the Bernstein Warehouse, in the city of Newark, where whisky (understood to have been owned by Bederski) was stored. While in the warehouse a policeman by the name of Louis Thomas entered the premises. Several shots were fired in the warehouse. Two hours after this Bederski was found upon the porch of his home in the condition mentioned. No witness could testify that Bederski had been shot in the warehouse. At a criminal trial arising out of the above occurrence, an owner of the warehouse testified that Bederski had no liquor stored in the warehouse. Before his death Bederski told his wife he thought a policeman had shot him. Upon these facts the board refused to allow the pension.

The respondent contends that Bederski's widow is not entitled to a pension because Bederski met his death while engaged in an unlawful enterprise, but, assuming for the purpose of argument that he did meet his death while engaged in an unlawful act, we are unwilling to hold that his widow is for that reason deprived of the right to receive a pension from the fund created for this purpose. The third section of chapter 160 of the Laws of 1920, which is the statute upon which Mrs. Bederski bases her application, provides as follows:

"The widow or children or sole dependent parent of any member of the police or fire de-

Opinion of Supreme Court.

partment, having paid into the fund the full amount of his annual assessment or contributions, who shall have lost his life in the performance of his duty, or who shall die from causes other than injuries received in the performance of duty, shall receive a pension equal to one-half of the salary of such member at the time of his death, not exceeding one thousand dollars."

It will be observed that a pension is given to the widow * * * of any member of the police department who has paid into the fund the full amount of his annual assessment or contribution, who shall have lost his life in the performance of his duty, or who shall die from causes other than injuries received in the performance of duty. Bederski died from causes other than injuries received in the performance of duty. The language of the statute plainly includes a case like the one under consideration. It may be that the draftsman of the act, if he had foreseen a state of facts like the one herein presented, would have so drafted the act as to make it inoperative in the present case. But the act is not so drawn. Its language is plain. Notwithstanding Bederski may have been engaged in a criminal undertaking when he actually received the wound which caused his death, his widow is entitled to a pension. The cases of *Scott v. Jersey City*, 68 N. J. Law, 687, 54 A. 441, and *Leffingwell v. Kiersted*, 74 N. J. Law, 407, 65 A. 1029, cited by the respondent, are not in point. They were decided under a statute by which a pension was to be paid, if a fireman should be fatally injured while in the performance of, or attempting to discharge, his duties. The provisions of the act under review are broader.

Opinion of Supreme Court.

The respondent further contends that to grant a pension under the facts revealed in the instant case is against public policy. The case of *Smith v. Metropolitan Life Insurance Co.*, 125 Misc. Rep. 670, 211 N. Y. S. 755, decided in October, 1925, in the Appellate Division of the New York Supreme Court, is cited to sustain this contention. In this case a man took out a policy of life insurance payable to his wife. He then murdered his wife. He was convicted and executed. His personal representatives demanded the payment of the policy which by the death of his wife had become payable to the insured's estate. It was held that to pay the proceeds of the policy to the personal representatives of the deceased husband's estate would be contrary to public policy, as the act of the husband in taking the life of his wife had enriched his estate. This decision follows many other decisions of like import. They differ materially from the present case. Bederski did not enrich his estate, assuming he would not have been killed if he had not visited the storehouse. He was the victim. A wife is not deprived of the proceeds of an insurance policy payable to her merely because her husband may be killed while engaged in an unlawful enterprise unless the policy so provides. In the case referred to by the respondent, it was the act of the insured which made the policy payable to his estate. In the present case it was not the act of Bederski in going to the warehouse, if he did, which caused his death, but the act of some one else in inflicting the wound from which he died. The visit to the warehouse was not the proximate cause of Bederski's death. The statute under which Mrs. Bederski applies for a pension evinces

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Opinion of Supreme Court.

a legislative intent to provide for the care and maintenance of members of the police and fire departments in case of disability, and for their widows, children, and sole dependent parents in the event of death. To insure such benefits there is paid into the fund a certain percentage of their salaries. It is in effect protection by insurance. The act should be construed liberally to effectuate the legislative intent. It would we think, be wrong to exclude a widow, innocent of any wrongdoing, from a pension which the act by its express provisions awards her where her husband dies from causes other than injuries received in the performance of his duty. A peremptory writ of mandamus, directing the payment of a pension to Mrs. Bederski pursuant to the provisions of the statute, is awarded.

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Rule to Mould Pleadings.

RULE TO MOULD PLEADINGS.

NEW JERSEY SUPREME COURT.

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <div style="text-align: right;"><i>Relator,</i></div>	}	<i>On Rule to Show Cause Why a Per- emptory or Alternative Writ of Man- damus Should Not Issue.</i>
20	<div style="text-align: center;"><i>vs.</i></div> THE POLICEMEN'S AND FIREMEN'S PENSION BOARD OF THE CITY OF NEWARK, <div style="text-align: right;"><i>Respondent.</i></div>		<i>Rule to Mould Pleadings.</i>

20 Court having awarded a peremptory writ of mandamus in this cause, and it now appearing that the respondents desire to appeal from said decision to the Court of Errors and Appeals,

IT IS, on motion of Jerome T. Congleton, Esquire, corporation counsel of the City of Newark,

30 ORDERED that an alternative writ of mandamus do issue in said cause, returnable forthwith, and that the relator demur to the return filed thereto, and that the pleadings be moulded so that the said appeal may be perfected in the Court of Errors and Appeals.

AND IT IS FURTHER ORDERED that judgment final be entered on such moulded pleadings.

Dated October 2, 1926.

Let this rule be entered in the minutes.

WM. S. GUMMERE,
C. J.

I consent to the foregoing order.

40 JOHN W. MCGEEHAN, JR.,
Attorney of Relator.

Writ of Mandamus.

WRIT OF MANDAMUS.

NEW JERSEY SUPREME COURT.

NEW JERSEY, ss.

The State of New Jersey, to The
Policemen's and Firemen's Pension 10
(L. S.) Board of the City of Newark. GREET-
ING:

WHEREAS, Peter Bederski, a member of the Police Department of the City of Newark died on the 11th day of May, 1923, while a member of said Police Department of the City of Newark; and

20 WHEREAS, said Peter Bederski was appointed a member of the Police Department of said City on September 16, 1919, and continued to be a member of said department until the said date of his death; his salary at the time of death was \$2,200.00 per annum; he was not under suspension nor under any charges at the time of his death; at no time during his service had any charges been preferred against him; he had married the relator Margaret Bederski, his widow, before he had attained the age of 50 years; since his death the relator has not remarried; he left three 30
infant children aged 9 and 7 years and 1 month; all deductions from his salary provided for by Chapter 160 of the Laws of 1920 relating to the Policemen's and Firemen's Fund had been made up to the time of his death; and

WHEREAS, on the 11th day of May, 1923, when the said Peter Bederski was not in uniform or on duty, he died from the effects of a revolver shot; and

40 WHEREAS, Margaret Bederski, the widow of said Peter Bederski, applied to Policemen's and

Return to Writ.

years and one month, respectively; all deductions from his salary provided for by Chapter 160 of the Laws of 1920, relating to the Policemen's and Firemen's Fund had been made up to the time of his death.

10 On May 10, 1923, said Peter Bederski was not on duty. At 8 o'clock that evening he left his home in good health, he was not in uniform. At 4 o'clock on the morning of May 11th following he was found on the porch of his home with a bullet wound in his body from the effects of which he died shortly thereafter.

20 On May 11, 1923, early in the morning Bederski with several other persons met for the purpose of going to a warehouse known as the Bernstein Warehouse on Jelliff avenue in the City of Newark, where whiskey understood to have been owned by Bederski was stored. The said Peter Bederski had no lawful right to enter the premises. While in the warehouse, a policeman named Thomas entered, and several shots were fired. The four persons who were Bederski's companions on said occasion were convicted of entering the warehouse and of burglary and are now serving terms in Trenton.

30 Chapter 160 of the Laws of 1920, entitled "An Act providing for the retirement of policemen and firemen of the Police and Fire Department in municipalities of this state, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the Police and Fire Departments, and the widows, children and sole dependent parents of deceased members of said Departments," approved April 15, 1920, provides in Section 3
40 thereof that "the widow or children or sole de-

Return to Writ.

pendent parent of any member of the Police or Fire Department, having paid into the fund the full amount of his annual assessment or contributions, who shall have lost his life in the performance of his duty or who shall die from causes other than injury received in the performance of duty, shall receive a pension," etc. 10

Bederski did not lose his life in the performance of duty. He died from causes other than injuries received in the performance of his duty.

He died while engaged in the performance of an unlawful act. His widow should therefore not be entitled to share in said pension fund.

On June 30, 1925, the Policemen's and Firemen's Retirement Pension Board met in the office of the Mayor of the City of Newark and adopted a motion denying the application of Margaret Bederski for a pension. 20

Respondents therefore pray that said writ may be dismissed and that they be relieved from obeying the command therein given.

Dated 192 .

THE POLICEMEN'S AND FIREMEN'S
PENSION BOARD OF THE CITY OF
NEWARK,

By THOMAS E. CURRAN, 30
Secretary.

JEROME T. CONGLETON,
Attorney Respondent.

Demurrer.

DEMURRER.

NEW JERSEY SUPREME COURT.

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <div style="text-align: right;"><i>Relator,</i></div>	} <i>On Man-</i>
	<i>vs.</i>	} <i>damus.</i>
	THE POLICEMEN'S AND FIREMEN'S PENSION BOARD OF THE CITY OF NEWARK, <div style="text-align: right;"><i>Respondent.</i></div>	} <i>Demurrer.</i>

20 Margaret Bederski, the relator, by John W. McGeehan, her attorney, comes and says that the said writ should not be dismissed for that:

The return to said writ by said respondents and the matters set forth therein are as the same are set forth, not sufficient in law, and wherefore she prays that a peremptory writ do issue to said Policemen's and Firemen's Pension Board of the City of Newark in conformity with the terms of the alternative writ heretofore issued.

30 JOHN W. MCGEEHAN, JR.,
 Attorney of Relator.

Joinder in Demurrer.

JOINDER IN DEMURRER.

NEW JERSEY SUPREME COURT.

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <div style="text-align: right;"><i>Relator,</i></div>	} <i>On Man-</i>
	<i>vs.</i>	} <i>damus.</i>
	THE POLICEMEN'S AND FIREMEN'S PENSION BOARD OF THE CITY OF NEWARK, <div style="text-align: right;"><i>Respondent.</i></div>	} <i>Joinder in</i>
		} <i>Demurrer.</i>

20 And the respondents, Policemen's and Firemen's Pension Board of the City of Newark, say that:

The return to said writ and the matters therein contained, in the manner and form as stated therein, are sufficient in law and that they are thereby entitled to be relieved of the command made therein, and the said Policemen's and Firemen's Pension Board of the City of Newark is ready to verify and prove the same as the Court shall direct, and prays judgment thereupon.

30 JEROME T. CONGLETON,
 Attorney of Respondent.

Rule for Judgment.

RULE FOR JUDGMENT.

NEW JERSEY SUPREME COURT.

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <div style="text-align: right;"><i>Relator,</i></div>	}	<i>On Man-</i>
	<i>vs.</i>		<i>damus.</i>
	THE POLICEMEN'S AND FIREMEN'S PENSION BOARD OF THE CITY OF NEWARK, <div style="text-align: right;"><i>Respondent.</i></div>	}	<i>Rule for</i>
			<i>Judgment.</i>

20 The Court having made a rule to mould pleadings herein and it now appearing that said pleadings have been duly moulded in accordance with said rule so as to exhibit an alternative writ of mandamus, a return to said writ, a demurrer to said return and a reply thereto, It Is THEREUPON, on this day of January, 1927, on motion of John W. McGeehan, Esquire, attorney for the relator,

30 ORDERED, that judgment final be entered on the pleadings so moulded as aforesaid in favor of the relator and against the respondents.

Notice and Ground of Appeal.

NOTICE AND GROUND OF APPEAL.

NEW JERSEY SUPREME COURT.

10	THE STATE, <i>ex rel.</i> MARGARET BEDERSKI, <div style="text-align: right;"><i>Relator,</i></div>	}	<i>On Rule to</i>
	<i>vs.</i>		<i>Show Cause</i>
	THE POLICEMEN'S AND FIREMEN'S PENSION BOARD OF THE CITY OF NEWARK, <div style="text-align: right;"><i>Respondent.</i></div>	}	<i>Why a Per-</i>
			<i>emptory or</i>
		<i>Alternative</i>	
		<i>Writ of</i>	
		<i>Mandamus</i>	
		<i>Should Not</i>	
		<i>Issue.</i>	
		<i>Notice of</i>	
		<i>Appeal.</i>	

20 TAKE NOTICE that the respondent appeals from the whole of the judgment entered in this cause to the Court of Errors and Appeals, on the following ground:

The Supreme Court of the State of New Jersey erred in granting to the appellee a peremptory writ of mandamus directing the payment of a pension to the relator-appellee instead of dismissing the application therefor.

Dated August 17, 1926. 30

Respectfully,
 JEROME T. CONGLETON,
 Attorney of Appellant.

MAY 1 1927

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

THE STATE, *ex rel.* MARGARET
BEDERSKI,

Relator-Appellee,

vs.

THE POLICEMEN'S AND FIRE-
MEN'S PENSION BOARD OF THE
CITY OF NEWARK,

Respondent-Appellant.

*On
Mandamus.*

BRIEF OF RESPONDENT-APPELLANT.

This is an appeal from a judgment of the Supreme Court awarding a peremptory writ of mandamus directing the payment to the relator of a pension provided by statute for members of the Police and Fire Departments of the City of Newark.

Peter Bederski, husband of the relator, became a member of the Police Department of the City of Newark on September 16, 1919, and continued as such until he was killed. On May 10, 1923, at eight o'clock in the evening, he left his home without telling his wife where he was going. He was not in uniform, or on duty. Early in the morning of May 11th, he was found on the steps of his home suffering from a bullet wound, from the effects of which he died. On that morning, Bederski, with four other persons, met for the purpose of going to a warehouse, where whiskey understood to have been owned by Bederski was stored. He had no lawful right to enter the building. While they were in the warehouse, a policeman, who was on duty, entered the building. Several shots were fired there.

The Supreme Court said:

"No witness could testify that Bederski had been shot in the warehouse."

It evidently overlooked the statement in the stipulation (p. 14, l. 32), which reads as follows:

"While in said warehouse a policeman, by the name of Louis Thomas, entered and while said persons were within the warehouse several shots were fired therein."

The several persons referred to undoubtedly included Bederski, as the stipulation (p. 14, l. 25) admits that he, in company with "several other persons" therein named met for the purpose of going to the warehouse. Shortly afterward Bederski arrived at his home, wounded. It was testified in the criminal trial in which Bederski's companions were convicted of unlawful entry and burglary, that Bederski had no whiskey in the warehouse (p. 15, l. 9). He told his wife that he thought a policeman had shot him (p. 11, l. 30).

If the shots were fired in the warehouse, and as there is no proof that any shots were fired elsewhere, the fair presumption is that Bederski was shot in the building where he had no right to be.

In seeking a pension under Chapter 160 of the Laws of 1920, the relator must necessarily rely on Section 3 of that act, which provides that the widow, etc.,

"who shall have lost his life in the performance of his duty, or who shall die from causes other than injuries received in the performance of duty, shall receive a pension * * *."

It is clear that Bederski did not lose his life in the performance of his duty.

The relator must rely on the clause

"Who shall die from causes other than injuries received in the performance of duty."

Pensions are a reward for honorable service, and even an innocent widow of a guilty husband is not entitled to it.

The framers of the statute must have had in mind that a policeman or fireman who was killed while not performing duty, was not entitled to a pension, because a distinction is drawn between one who may have "lost his life in the performance of his duty," and one "who shall die from causes other than injuries received in the performance of duty." In one case the statute says "lost his life" which would carry with it the construction that he was killed. In the other situation the words "who shall die" are used, which by inference would seem to indicate that if he dies from natural causes resulting from sickness or disease, or from injuries received in the performance of his duty, the widow would be entitled to the pension.

Certainly no inference could or should be drawn from the language of the statute that would entitle a widow to the pension, her husband having committed or attempted to commit a crime.

Similar words in an earlier statute (P. L. 1902, page 557) were declared by an explanatory statute adopted May 10, 1907 (P. L. 1907, page 402),

"to mean and construed to apply to the case of any officer or man who has died or shall hereafter die as the direct result of an injury received, or sickness or illness contracted or incurred, *while in the performance of actual duty or the attempted performance of actual duty.*"

The Court of Errors and Appeals in *Maitland v. Board of Police Commissioners of Garfield* (93 N. J. Law, page 150) referring to the act above cited said:

“This is the only rational meaning to apply to the same language in the act of 1911, under which this suit was brought; and the legislature’s interpretation of its own language should be adopted.”

The Supreme Court held that

“notwithstanding Bederski may have been engaged in a criminal undertaking when he actually received the wound which resulted in his death, his widow is entitled to a pension.”

This was on the theory that the policeman had paid into the fund by deduction from his monthly salary two per cent. thereof but it did not give consideration to the fact that the taxpayers pay double the percentage deducted from the salary of the member of the department.

The Supreme Court held that the case of *Scott v. Jersey City*, 68 N. J. L., page 687, and *Lefingwell v. Kiersted*, 74 N. J. L., page 407, were not in point because they were decided under a statute by which a pension was to be paid if a fireman should be fatally injured while in the performance of, or attempting to discharge his duties. In the latter case, Mr. Justice Reed stated:

“the query was whether his death occurred in the circumstances which by the statute gave a right to a pension.”

In that case the decedent fell from a trolley car on his way to his home. In submitting these cases, we did not claim they were binding against the relator, but they were cited to call attention to the fact that because of the equivocal language in section 2 of the act then under con-

sideration, the Court invoked the language of section 1, and, therefore, with the two sections read together, exhibited an intention that disability or death should occur in active service. There is ambiguity between sections 2 and 3 of the act under consideration, and we claim they should be read together.

If there is any ambiguity or obscurity in the language of the statute it should be resolved against the relator because it is evident that it was never the intention of the Legislature to provide for a pension to the widow or dependents of a man who by an unlawful act created the situation.

If the two sections are read together, it will be observed that if the wound that Bederski had received had not caused his death, but had permanently disabled him, he could not have been retired on a pension because it is provided in section 2 of the act under consideration, that:

“any member * * * who shall have received permanent disability *in the performance of his duty*, shall * * * be retired.”

so that it is clear that neither he nor his family would have been entitled to receive any pension. When sections 2 and 3 are read together, the words:

“who shall die from causes other than injuries received in the performance of duty”

mean, and we contend are intended to mean, a death without the active influence of the decedent.

The Supreme Court declared that the statute evinces a legislative intent to provide for the care and maintenance of members in case of disability, and for the widows and their dependents in cases of death, and that to insure such benefits there is paid into the fund a certain per-

centage of their salaries, but Bederski's dependents would not have received the benefits in case he had received permanent disability, even though he had paid his assessments, because, as we have stated, the statute permits him to receive a pension only if the permanent disability occurs in the performance of his duty. That it is clear that it is a pension and not insurance is seen when it appears that if a policeman is dismissed from the service he loses all rights to a pension or to any consideration or even reimbursement of the money already paid into the fund by him.

PUBLIC POLICY SHOULD PRECLUDE THE PAYMENT OF PENSION TO THE WIDOW OR DEPENDENTS OF A MAN WHO WAS KILLED WHILE COMMITTING AN UNLAWFUL ACT.

In the Supreme Court we cited the case of *Smith v. Metropolitan Life Insurance Co.*, decided October 1925, in the appellate term of the New York Supreme Court, where payment was refused to a man who had murdered his wife. The policy was on his life and was payable to his wife. After his conviction and execution, payment was demanded by his administrators and refused, and the Court held that they were not entitled to recover. That Court in its opinion held that to pay the proceeds of the policy would be contrary to public policy as the act of the husband enriched his estate. We contend that the circumstances are not different than that shown in the Smith case. Bederski had a pension payable to his wife. He was killed. If this pension is payable to his widow, she is enriched. While he may have been the victim, as the Supreme Court stated, he became such by his own

unlawful act. The Supreme Court further stated that in the Smith case it was the act of the insured which made the policy payable to his estate, and that in the Bederski case it was not the act of Bederski in going to the warehouse which caused his death, and that the visit to the warehouse was not the proximate cause of his death. In the opinion of the Supreme Court it was stated that Bederski had not enriched his estate

“assuming he would not have been killed if he had not visited the warehouse.”

But he did visit the warehouse and he was killed, so that we contend that the visit was the proximate cause of his death.

If Bederski had not been shot or had survived his wound, he would now probably be serving a term in prison with his criminal associates.

In the first section of the statute under consideration a policeman may retire who has honorably served for twenty years and attained the age of fifty, and any member who has honorably served for twenty years and attained the age of sixty-five shall be retired. If a pension is payable during life to those who have honorably served, a pension should not be payable after death to the widow of one who has served dishonorably, and by reason of such dishonorable service has met his death.

“No one acquires a right of action from his own wrong,” and this maxim should apply to the widow or dependents of one who has committed a wrong. While it is conceded that the widow and minor children are innocent of any wrong doing it frequently happens that the innocent suffer for the guilty.

While it is true that the act does not expressly provide against the granting of a pension to the dependents of one who has committed an unlawful act, we cannot believe that it was ever the intention of the Legislature to provide for a pension to the widow or dependents of a man who caused his death by his own unlawful act.

If the relator by virtue of the payment of the two per cent. claims any right by way of an insurance, the cases hold that the beneficiary cannot recover where his act causes the death of the insured.

While our sympathy may go out to the widow we must take into consideration the fact that the pension provided for under the act is only partly paid by the member and that the municipality pays twice the amount into the fund, so that it is not an insurance in the ordinary sense. It is a pension provided for a member of the Department, who, by his good behavior, has shown the right to deserve it.

Respectfully submitted,

JEROME T. CONGLETON,
CHARLES M. MYERS,
Attorneys for and of Counsel
with Respondent-Appellant.

New Jersey Court of Errors and Appeals

THE STATE, *ex rel.* MARGARET
BEDERSKI,

Relator-Appellee,

vs.

THE POLICEMEN'S AND FIRE-
MEN'S PENSION BOARD OF
THE CITY OF NEWARK,

Respondent-Appellant.

*On Man-
damus.*

BRIEF OF JOHN W. MCGEEHAN, Jr., Of Counsel with Relator-Appellee.

This appeal was taken by the respondent-appellant from the judgment of the Supreme Court awarding a peremptory writ of mandamus directing the payment to the relator, Margaret Bederski, as widow of Peter Bederski, deceased, who died while a member of the Police Department of the City of Newark, a pension for the benefit of herself and her children, pursuant to the statute, paragraph 3, Chapter 160, Laws of 1920 (p. 326), establishing the Policemen's and Firemen's Pension Fund and providing for the payment of such pension.

The matter came before the Supreme Court on the return of the Rule to Show Cause, and the Supreme Court (opinion, p. 20, S. C.) awarded a peremptory writ directing the payment of such a pension, whereupon the respondent appealed and obtained a rule to mould the pleadings and to the return of the respondent to the writ, relator demurred. The sole ground of the appeal is that (p. 35, S. C.)

"The Supreme Court of the State of New Jersey erred in granting to the appellee a

peremptory writ of mandamus directing the payment of a pension to the relator-appellee instead of dismissing the application therefor."

This appeal, therefore, submits for the consideration of this Court the same question that was submitted to the Supreme Court, to wit, whether or not under the statute the relator was entitled in behalf of herself and children, to a pension, and whether the Supreme Court erred in directing the issuance of a peremptory writ of mandamus.

It is respectfully submitted that by the clear terms and provisions of the statute in question the relator was entitled to the writ and to the pension for herself and children.

The state of case filed contains in full the record of the proceedings had before the respondent board and includes the application for pension, minutes of the meetings at which the same was considered, the testimony taken thereon, and stipulations and admissions by counsel of the applicant and board, respectively, and the decision of the board denying the pension. The state of case also contains a copy of the opinion of the Supreme Court awarding the peremptory writ of mandamus.

Facts.

The State of the Case which includes the evidence presented before the Board on the hearing of the application for pension and stipulations of admitted facts, reveals that there is practically no dispute of facts involved in this case. It appears therein, that Peter Bederski was appointed a member of the Police Department of the City of Newark on September 16, 1919; that he remained

a member of the Police Department until the time of his death on May 11, 1923; that he was receiving a salary at that time of \$2,200 per year; that he was not under suspension at such time or under charges nor were any charges at any time preferred against him in the Police Department which were pending at the time of his death; that he was not dismissed from the Police Department at any time; that he was never tried or convicted of any offence alleged to have been committed on the night of his death; that his wife, the petitioner, did not marry him after he had attained the age of fifty years and that his widow has not re-married.

All of the foregoing is stipulated (p. 15, S. C.) as matters of admission in the record, except the date of his appointment which is admitted (p. 8, S. C.). The proof and admissions further show that Peter Bederski left him surviving his widow, Margaret Bederski, the applicant, and three infant children: Agnes, age 9; Gertrude, age 7, and Evelyn, age 1 month, at the time of his death.

It was further proven and admitted (p. 8, S. C.) that the deductions provided for by Chapter 160 of the Laws of 1920, relating to the Policemen's and Firemen's Pension Fund had been made from his salary up to the time of his death.

The foregoing testimony and admissions constitute full proof of all of the circumstances and facts required under the statute to entitle the applicant to the maximum pension of \$1,000 per year, for her benefit and the benefit of her infant children, provided for in the statute.

Application for such pension was duly made by Margaret Bederski, the widow, on July 5, 1923 (p. 6, S. C.) and the first hearing held there-

on December 13, 1923, and finally after having the matter under consideration at various adjourned meetings, the Board rendered its decision on June 30, 1925, denying the application for pension, whereupon the rule to show cause bringing these proceedings before the New Jersey Supreme Court was applied for and granted.

At the hearing, the circumstances of the policeman's death were inquired into by the Board through its counsel and the evidence shows that the decedent came home at four o'clock in the morning of May 11, 1923, suffering from a revolver shot wound and that at eight o'clock the previous evening he had left his home, not in uniform or on duty, not informing his wife where he was going (pp. 9 and 10 S. C.). He did not tell his wife who he was going to meet, but merely said that he had an appointment. She further testified and there was no evidence to the contrary that she did not know what his destination was when he went out nor did she learn after he came home where he had been shot, except that after the police or the priest arrived and his wife begged him to tell her who shot him and if he knew who did it, he said "I think a policeman." The City Counsel representing the Board, suggested the taking of testimony of witnesses, intended to show that Bederski was engaged in an unlawful act at the time he was shot. Counsel for the applicant (p. 12 S. C.) objected to the taking of any such testimony "upon the ground that under the statute known as the Pension Act of 1920, such circumstances are immaterial, as the statute gives to the family of a deceased office who died from any cause, the right to a pension." This objection was overruled and an exception taken to the ruling. In view of the ruling of the Board that such evidence be re-

ceived and considered, a stipulation was entered into (p. 14 S. C.) subject to the applicant's objection to the materiality and competency of the evidence. That stipulation is to the effect that certain witnesses who testified in previous criminal trials would testify if called that

"on the morning of May 11, 1923 (the date of death of Peter Bederski), he in company with several other persons, including Adam Dresch, Charles Hetschel, Louis Guimbelstof and Dan McGowan met for the purpose of going to a warehouse known as the Bernstein warehouse in Newark, N. J., where certain whiskey, understood by such witnesses to be owned by Peter Bederski was stored. While in said warehouse, a policeman by the name of Louis Thomas entered and while said persons were within the warehouse, several shots were fired therein. Subsequently and about an hour or two hours after this occurrence, Peter Bederski was found upon the porch of his home with a bullet wound in his body from the effects of which he died. It is not known to any of the persons who could be called as witnesses, whether or not the bullet wound found upon him was inflicted in the warehouse. In addition to the foregoing, it is further admitted that at the criminal trial, one of the owners of the warehouse testified that Peter Bederski did not have any whiskey owned by him stored in said warehouse and that he had entered said premises without permission of the owner."

On behalf of the Board, its counsel thereupon stipulated and admitted the following:

"It is stipulated and admitted that at the time of his death, Peter Bederski was a member of the Police Department of the City of Newark, receiving a salary of \$2,200 per year; that he was not under suspension at such time or under charges nor were any charges at any time preferred against him in the Police Department which were pending at

the time of his death; that he was not dismissed from the Police Department at any time; that he was never tried or convicted of any offense alleged to have been committed on the night of his death; that his wife, the petitioner, did not marry him after he had attained the age of fifty years and that his widow has not remarried."

Upon the foregoing facts, the applicant respectfully submits that she was and is entitled to receive in accordance with the provisions of the statute, a pension for the benefit of herself and infant children of \$1,000 per year as the widow of said deceased policeman.

ARGUMENT.

The statute, Chapter 160, Laws of 1920, page 324, is entitled "An Act providing for the retirement of policemen and firemen of the police and fire departments in municipalities of this State, including all police officers having supervision or regulation of traffic upon county roads, and providing a pension for such retired policemen and firemen and members of the police and fire departments, and the widows, children, and sole dependent parents of deceased members of said departments."

The section of the above act which governs the right to pension to the widows and children of deceased police officers is Section 3 which reads as follows:

"3. The widow or children or sole dependent parent of any member of the police or fire department, having paid into the fund the full amount of his annual assessment or contributions, who shall have lost his life in the performance of his duty, or who shall die from causes other than injuries received in the performance of duty, shall receive a pension equal to one-half of

the salary of such member at the time of his death, not exceeding one thousand dollars; provided, however, that in case of a widow and children such pension shall be paid to the widow for the use of herself and the children, if any, and in case of children and no widow, then such pension shall be paid to such of the children who have not attained the age of sixteen years, in equal shares, provided there are three or more children; if there are two children, they shall be paid twenty dollars each monthly; if one child, twenty-five dollars monthly; and in case there is no widow and no children under the age of sixteen years, then such pension shall be paid to the sole dependent parent of such deceased member; and provided, further, no widow shall be entitled to a pension who shall have married any such member after he shall have attained the age of fifty years; and provided, further, that if any widow entitled to a pension as aforesaid re-marry, then such pension shall cease and shall not be paid to such widow or her children."

The next section, Section 4, provides for the creation and maintenance of the fund and specifies, in part, that

"there shall be deducted from every payment of salary to such member of the police and fire departments in such municipality, two per centum of the amount thereof," etc.:

and further that

"the municipality shall raise by taxation and pay into said fund yearly, an amount equal to four per centum of the total salaries paid to the members of the police and fire departments";

and further provision is made for the adding of various fines, etc., to the fund.

An examination of each requirement of Section 3 of the statute and a comparison with the

proofs and admissions in the state of case, shows that every requirement of the statute is found to exist, so as to entitle this widow and her children to the pension.

Following the words of Section 3, the applicant is (1) "the widow or children" of a (2) "member of the police or fire department" (3) and "having paid into the fund the full amount of his annual assessment or contributions" who did (4) "die from causes other than injuries received in the performance of his duty." Under such circumstances, the act provides for a pension equal to one-half of the salary of such member at the time of his death, not exceeding \$1,000.00. Certain provisions of the statute then follow to the effect that no widow shall be entitled to a pension who shall have married any such member after he shall have attained the age of fifty years and that the pension shall cease if the widow re-marries, but it is admitted that neither of these contingencies exist.

The contention of the Board in opposition to the pension appears to be that a pension should not be granted to the widow and children of a deceased police officer who died or may have died as the result of the commission or suspected commission of an unlawful act and that the Legislature could not have intended such surviving dependents to receive a pension. Such view, whatever arguments might be advanced for or against it from a logical or philosophical standpoint finds no support or basis in the explicit and clear words and provisions of the statute. The statute must be interpreted from its language and the clear purpose and expressed intent of the act should govern in its interpretation. It cannot be disputed that nowhere does the act provide that a police officer whose character or reputation

might be assailed could die and his dependents should by reason thereof be deprived of the benefits of the act. Nowhere does it state that the dependents of an officer who dies while in the commission of an unlawful act should not receive the pension which is expressly provided for them and for which the deceased officer has paid a substantial amount monthly to the fund to receive for his dependents, these expressed statutory benefits for them. Nowhere is there any stipulation or provision in the statute that the Board may exercise its discretion or judgment as to who shall be entitled to the benefits of the act if they come within the statutory class. On the contrary, the act specifically gives the right of pension to the

"widow or children or sole dependent parent of *any* member of the police or fire department, having paid into the fund the full amount of his annual assessment or contributions, who shall have lost his life in the performance of his duty *or who shall die from causes other than injuries received in the performance of duty.*"

The very fact that the Legislature in the same sentence specifically created two classes of decedents, to wit:

"who shall have lost his life in the performance of his duty"

which necessarily means who shall die from injuries or illness contracted or obtained in the performance of his police duty and then added as an alternative clause:

"or who shall die from causes *other than injuries received in the performance of duty*"

shows that it was the purpose of the Legislature to give the dependents of any police officer who died while a member of the police department,

having paid his assessments, the right to the pension.

The Statute of 1920 contains a repealer of all prior acts inconsistent therewith. The act repealed by the Statute of 1920 and which was in force when it was enacted, is Chapter 142, Laws of 1914, Section 13, page 249, and which provided for a widow's pension for

"the widow of every member of the police force or department of such cities having paid into the fund the full amount of the annual assessment and contributions and who shall have lost his life in the performance of duty or who shall have been retired because of injuries or disease contracted in the performance of duty and shall then die from same";

and Section 15 of the same act provided for a pension of one-quarter of the annual salary to the

"widow of every member of such police force * * * who shall have died from causes other than injuries received in the performance of duty and who shall have served nine years as a member of such police force."

The language of Section 15 is precisely the same as that embodied in the act of 1920 now in force, as to the second class of policemen whose widows are entitled to a pension, and distinguishes by such language those who shall die of any cause and the dependents receive a quarter pension from those who died in the performance of duty or who died from illness or injury contracted in the performance of duty and whose dependents receive a one-half pension.

Section 15 of Chapter 142, Laws of 1914, was then amended by Chapter 69, Laws of 1917, Section 5, page 125, which did not change Section 15,

except provided for such one-quarter pension, a minimum allowance of \$365.00 per year. In all other respects, the section remained the same when the statute of 1920 was passed, repealing the statute of 1914. The effect of the statute of 1920, which is now in force, was to combine in one section providing for a 50% pension for the widows of both classes, to wit: those who shall have lost their lives in the performance of their duty and those who die from other causes and make both of them entitled to the same amount, to wit, 50% of the salary with a maximum of \$1,000.00 per year.

And the Pension Board of the City of Newark in administering the fund entrusted to it, has granted ever since 1920, a pension of 50% to the dependents of any policeman who died while a member of the fund from any causes whatever. This section of the statute is intended for the benefit not of the police officer, but of his widow and minor children who are innocent of any wrong or knowledge of wrong and for which protection they, through their husband and father, for years have paid a consideration amounting to 2% of the gross salary of the police officer. In this case, there is no definite proof that Bederski was engaged in any criminal act when he was shot. There is not even any definite proof or knowledge on the part of anyone, beyond surmise, that he was shot in the warehouse, when shots were fired there. He never was convicted of any offense, either before the police tribunal or in the courts. He never received a hearing or trial which would entitle the Pension Board to look upon him as a guilty man. It is inconceivable that under these circumstances, his widow and infant children would be intended by the Legislature to suffer the loss of the pension

which they need and for which they have paid in past years by being deprived of the contributions made to the fund from their family's income.

A careful consideration of the reports shows no decision of our courts arising out of any similar refusal of a pension board to pay a pension under similar circumstances. The act has, however, been applied by the courts in several instances where members of fire or police departments were originally denied enrollment in the pension fund on the ground that they were not members of the department and in which cases the Supreme Court ordered their inclusion.

These cases are enlightening as indicating the all-inclusive effect of the provisions of the statute so as to embrace all members of such departments in accordance with the language of the statute.

In the case of *Sheehan v. Lee, Director of Revenue and Finance, et al.* (115 Atl. Rep. 347), the Supreme Court examined the Statute of 1920, upon the application of the relator, Bridget Sheehan, for a writ of mandamus requiring the Police and Fire Pension Commission of Trenton to place her name upon the roll of members of the Police Department entitled to the benefit of the fund. The relator was appointed to the position of janitress in the Police Department. The Supreme Court in granting a peremptory writ of mandamus and referring to the Act of 1920 said, in part,

"It evinces a legislative intent, and adopts a policy, to make provision for the care and maintenance of *all the members of such departments* in case of death or disability, and the widows, children and sole dependent parents of deceased members and should be

construed to effectuate that intent. *Hulme v. Board of Commissioners*, 111 Atl. Rep. 541. Affirmed, *Hulme v. Donnelly*, 112 Atl. 498."

The construction that the act includes all and excludes none of the members of the police and fire departments, finds strong support in the provision contained in Section 4, requiring the municipality to raise by taxation and pay into the fund yearly "an amount equal to four percentum of the total salaries paid to the members of such departments."

While the facts in the case at bar are not identical with the case of *Sheehan v. Lee*, above, the same principle is really involved, for the Statute of 1920 includes the widow and children of every member of the Police Department as fully as it includes every member of the Police Department in the rights on the fund.

The title of the act itself expressed the purpose of the act when it is denominated as:

"An act * * * providing a pension for * * * the widows, children and sole dependent parents of deceased members of said departments."

This title is referred to as indicating the act in *Hulme v. Board of Commissioners*, 111 Atl. Rep. 541.

The statute in question is a remedial one and should be construed liberally to advance the object the Legislature had in view. *Hoguet v. Wallace*, 28 N. J. L. 523. The object of which the Legislature intended to accomplish was the alleviation of want of widows and children of members of the Police Department upon their death, by providing a pension. It would seem cruel and illogical to deprive them of that for which they have paid in part, where they are innocent of any wrong or where the Legislature has not

by any language contained in the act, in any way indicated such an exception to the specific wording of the statute.

**ANSWER TO BRIEF OF
RESPONDENT-APPELLANT.**

In the brief of the respondent-appellant the suggestion is made that the Supreme Court in stating that

“No witness could testify that Bederski had been shot in the warehouse,”

evidently overlooked the statement in the stipulation that

“While in said warehouse a policeman, by the name of Louis Thomas, entered and while said persons were within the warehouse several shots were fired therein.”

There is no basis for the suggestion that the Supreme Court overlooked any of the facts in the stipulation, as the Supreme Court, in stating what it did, stated practically what the stipulation itself contains (P. 14, S. C.),

“It is not known to any of the persons who could be called as witnesses whether or not the bullet wound found upon him was inflicted in the warehouse.”

The respondent's brief also errs in stating as a fact (P. 2),

“It was testified in the criminal trial in which Bederski's companions were convicted of unlawful entry and burglary that Bederski had no whiskey in the warehouse.”

As a matter of fact, Bederski's companions were not convicted of unlawful entry and burglary in any trial, the only trial that was held having been a trial for murder in which the jury returned a verdict of acquittal, but the testimony referred to was that of one witness,

the owner of the warehouse, who testified Bederski had no whiskey stored there. However, the stipulation states that (P. 14, S. C.),

“Certain whiskey understood by such witnesses to be owned by Peter Bederski, was stored”

in the warehouse, and in fact, the brief of the respondent (p. 1) states as a fact,

“On that morning, Bederski, with four other persons, met for the purpose of going to a warehouse, where whiskey understood to have been owned by Bederski was stored.”

Otherwise than the foregoing there was no dispute as to the facts in the case. However, as the Supreme Court points out in its opinion, there was no proof that Bederski met his death while engaged in an unlawful act, and even if he did, this would not deprive his widow and children of the pension established for them specifically by the statute. The argument of the respondent's brief seems to be that public policy should preclude the granting of a pension to the widow and children of a deceased police officer, assuming that the evidence showed he was killed in the performance of an unlawful act, even though the statute specifically confers the right to such a pension upon the widow and children of any police officer upon his death, if he be a member of the Police Department, having paid into the Pension Fund the required assessments. The opinion of the Supreme Court fully answers this contention, and there is no basis in law for the same. The Supreme Court opinion states in part, after quoting the statute,

“It will be observed that a pension is given to the widow * * * of any member of the Police Department who has paid into the Fund the full amount of his annual assessment or contribution, who shall have lost his life in the performance of his duty,

or who shall die from causes other than injuries received in the performance of duty. Bederski died from causes other than injuries received in the performance of duty. The language of the statute plainly includes a case like the one under consideration. It may be that the draftsman of the act, if he had foreseen a state of facts like the one herein presented, would have so drafted the act as to make it inoperative in the present case. But the act is not so drawn. Its language is plain. Notwithstanding Bederski may have been engaged in a criminal undertaking when he actually received the wound which caused his death, his widow is entitled to a pension."

No additional cases are cited in respondent-appellant's brief in this court from those cited in the Supreme Court and which were fully answered in the opinion of the Court. The cases cited refer to circumstances differing entirely from those in the present case and do not any of them involve an interpretation or consideration of the particular statute under which this application for pension was made, and the distinctions and inapplicability of the same are fully and carefully pointed out in the opinion of the Supreme Court.

It is respectfully urged that the decision of the Supreme Court awarding a peremptory writ of mandamus to the relator should be affirmed.

JOHN W. MCGEEHAN, JR.,
Attorney for and of Counsel with
Relator-Appellee.

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