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New Jersey
Court of Errors and Appeals

Summons.

THE STATE OF NEW JERSEY to TURNER CONSTRUCTION COMPANY, a corporation:

You are summoned to answer the annexed complaint of HENRY STEERS, INC., a corporation, in an action at law in the Hudson County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of the Hudson County Circuit Court, at Jersey City, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

(L. S.)

Witness, Henry E. Ackerson, Jr., Judge of the Hudson County Circuit Court, at Jersey City, this 22nd day of June, A. D. Nineteen hundred and twenty-six.

JOHN J. McGOVERN,
Clerk.

COLLINS & CORBIN,
Attorneys.

Complaint.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, a corporation, Defendant.	Action at Law.

The plaintiff, a corporation of the State of New York, duly authorized to do business in the State of New Jersey, engaged in the business of construction work, says that:

1. The defendant is a corporation of the State of New York, duly authorized to do business in the State of New Jersey, having its principal office in this state at No. 15 Exchange Place, Jersey City, New Jersey.

2. On February 11, 1924, the plaintiff had in its employ one Chris Olsen, a carpenter.

3. On said date at Kearney, Hudson County, New Jersey, the plaintiff was engaged in the building of a dock on the Passaic River and in the performance of said work, the employee, Chris Olsen, was employed together with other employees of the plaintiff.

4. At said time and place the defendant, through its servants and agents was operating a derrick unloading gravel from scows in the Passaic River which said derrick was supported by a large stiff leg that rested on the bulkhead at or near the place where the plaintiff's employees aforesaid were working.

5. At about 1:10 P. M. on the day and at the place aforesaid, the cable on the boom of said derrick and the boom fell directly over the heads of plaintiff's employees aforesaid causing the bucket to strike the said Chris Olsen, knocking him from the bulkhead to a scow below causing the injuries hereafter mentioned.

6. As a result of the accident aforesaid, the said Chris Olsen sustained two broken ribs, three fractures of the left leg and severe contusions of the elbow as well as a puncture of the lung.

7. Under and by virtue of the laws of the State of New Jersey, being Chapter 95 P. L. 1911 entitled "An Act Prescribing the Liability of an Employer to make Compensation to an Employee in the course of employment and establishing an elective schedule of Compensation, approved April 4, 1911, its amendments and supplements," the plaintiff herein became obligated to pay to the said Chris Olsen because of the injuries received as aforesaid, compensation for temporary disability from February 11, 1924, to August 14, 1924, being a period of twenty-six weeks and three days at the rate of $17 per week or $449.28.

8. Under and by virtue of the statute aforesaid, the plaintiff herein became legally obligated to pay to the said Chris Olsen or in his behalf

such medical, surgical and other treatment and hospital service as was necessary to cure and relieve the said Chris Olsen of the effects of the injuries and to restore the functions of the injured member or organ, if such restoration was possible. Pursuant to this obligation the plaintiff rendered the medical service required of it under the laws of the State of New Jersey aforesaid, and expended therefor the sum of $632.

9. Under and by virtue of the laws of the State of New Jersey aforesaid and more particularly Paragraph F of Section 23 of said statute, the plaintiff herein served or caused to be served upon the defendant on March 19, 1924, a statement of the compensation agreed between itself and Mr. Chris Olsen and by virtue of the service and filing of said notice, the plaintiff under said act became entitled to receive from the defendant herein, upon the payment of any amount in release by the defendant on account of its liability to the said Chris Olsen, a sum equivalent to the amount of compensation payments which the plaintiff had theretofore paid to the said Chris Olsen.

10. Subsequently on or about September 14, 1925, the defendant paid in release of its liability to the said Chris Olsen the sum of $3,000 and did not deduct from said amount for the benefit of the plaintiff herein, the amount of compensation as indicated on the notice so served as aforesaid, and said defendant has wholly neglected and refused to pay the amount of compensation indicated in said notice served as aforesaid.

11. Plaintiff demands the sum of $1,081.28 together with interest from September 14, 1925, and costs of suit.

COLLINS & CORBIN,
Attorneys of Plaintiff.

Answer.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, a corporation, Defendant.	Action at Law.

The defendant, a corporation organized under the laws of the State of New York and authorized to do business in the State of New Jersey, by way of answering plaintiff's complaint, says that:

1. It admits each and every allegation contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the plaintiff's complaint.

2. It denies each and every allegation contained in paragraph 11 of plaintiff's complaint.

Answer

FIRST SEPARATE DEFENSE.

1. Defendant admits that the plaintiff is entitled to be reimbursed by the defendant in the sum of $449.28 covering the compensation paid by the plaintiff to Chris Olsen, but denies that it is liable to the plaintiff in the sum of $632, the amount the plaintiff was required to pay to Chris Olsen for medical services rendered.

SECOND SEPARATE DEFENSE.

1. Section 23 F of Chapter 95, P. L. 1911, contains the following provision:

> "Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employee, or the dependents of the employee and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account of his or its liability to the injured employee or his dependents, a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents, which payments shall be deducted by the third persons or corporation from the sum paid in release or judgment to the injured employee or his dependents."

Reply

Said section does not require the defendant to reimburse the plaintiff for the medical services and incidental disbursements required to be rendered by the plaintiff under Chapter 95 of P. L. 1911, and amendments thereto, but requires only that the defendant shall be liable to the plaintiff for the amount of compensation payments which, according to the award in this case, cover twenty-six weeks and three days at the rate of $17 per week or a total of $449.28.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for defendant.

Reply.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, a corporation, Defendant.	Action at Law.

Plaintiff, by way of reply to the answer of the defendant filed herein says that:

1. It admits so much of the second defense as quotes the statute therein, but denies the legal

conclusion contained in said second defense that as a matter of law the plaintiff is only entitled to recover for $449.20.

OBJECTIONS IN POINT OF LAW.

Take notice that at the trial of this cause the plaintiff will move to strike out the first and second separate defenses on the ground that separately they do not state any definite answers as a matter of law which would bar or defeat the plaintiff's right to recover in this action and will also move to enter judgment in favor of the plaintiff at said time for the amount claimed in the complaint.

COLLINS & CORBIN,
Attorneys of Plaintiff.

Stipulation.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, a corporation, Defendant.	Action at Law.

For the purpose of the record in the above entitled cause of action, it is hereby stipulated between the attorneys for the respective parties, that the only payments which the employer has heretofore paid to the injured employee or his dependents consisted of weekly compensation payments amounting to $449.28 and that the sum of $632, representing the medical services rendered was paid direct to the doctors and parties rendering services, and did not at any time pass through the hands of the employee or his dependents.

COLLINS & CORBIN,
Attorneys of Plaintiff.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendant.

Stipulation.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, Defendant.	Action at Law.

For the purpose of the record in the above entitled action, it is hereby stipulated between the attorneys for the respective parties that the sum of $632, representing medical services, is apportioned as follows:

1. Paid East End Hospital for hospital services	$351.00
2. Paid Dr. L. A. Cahill for medical and surgical treatment	281.00
	$632.00

COLLINS & CORBIN,
Attorneys for Plaintiff.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant.

Stipulation.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, Defendant.	Action at Law.

For the purpose of the record in the above entitled cause of action, it is hereby stipulated between the attorneys for the respective parties that the sum of $632, representing medical services, etc., was not paid by the plaintiff in this cause as a result of an order by the Workmen's Compensation Bureau.

COLLINS & CORBIN,
Attorneys for Plaintiff.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys for Defendant.

Stipulation.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, Defendant.	Action at Law.

It is stipulated by and between the attorneys for the respective parties, that the attached constitute the notices served by the plaintiff upon the defendant, relative to the compensation payments made to Chris Olson, or on his behalf.

COLLINS & CORBIN,
Attorneys of Plaintiff.

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendant.

Turner Construction Co.,
242 Madison Ave.,
New York City, N. Y.

Take notice that on the 11th day of February, Nineteen hundred and 24 at or near Passaic Bulkhead, Western Electric Cable Plant, Chris Olson (hereinafter designated as the employee), an em-

ployee of Henry Steers, Inc. (hereinafter designated as the employer), received an injury for which, we believe, you are liable.

You are further notified that by an agreement entered into between the said employer and the said employee, the said employer, on account of said injury, has become liable for the payment of such moneys as are prescribed under the New Jersey Workmen's Compensation Act.

The said employer, therefore, demands of you, out of any moneys which you are to pay by release or judgment to or for the benefit of the said employee, or the dependents or next of kin of said employee, reimbursement of and for all moneys which at such time may have been paid by the said employer by virtue of its agreement aforesaid.

Signed

AETNA LIFE INSURANCE COMPANY
Per Edward Breen
E. G. S.

Dated Mar. 19th, 1924.

Stipulation

UNITED STATES FIDELITY AND GUARANTY COMPANY,

75 William Street,

NEW YORK

February 27th, 1925.

NYL. 43711 Legal 14306 TURNER CONSTRUCTION Co. (Chris. Olsen)

Aetna Insurance Company,
Essex Building,
Newark, New Jersey.

Gentlemen:

Attention of Mr. Edward Breen, Adjuster.

We acknowledge receipt of your third party notice in this case your No. 38-C-35071, Henry Steers, Inc., your assured and answering your letter of January 29th, which has just been referred to us by our Newark Office, we beg to advise that this case against our assured, Turner Construction Co., is in suit which is still pending in the Supreme Court, Kings County.

Will you kindly advise us by return mail, attention of the writer as to the compensation rate in the case, the amount of compensation and medical expenses, if any, paid by you to date and if the injured is still receiving compensation, the approximate maximum value of the compensation claim.

Stipulation

We would also thank you to furnish us with a copy of your medical reports in the case.

Yours very truly,

ALEX. F. JONT,
Supt. Liab. Claim Dept.

AFJ:MK

Mar. 16, 1925.

United States Fidelity & Guaranty Co.,
75 William St.,
New York City, N. Y.

Att:—AFJ. Supt. Lia. Dept.
38-C-35071—Chris Olson vs. Henry Steers, Inc.

Dear Sirs:

In reply to your favor of February 27th, 1925, we would state that the compensation rate in this case is $17.00.

We have paid 26-3/7 weeks' compensation in the amount of $449.28, traveling expenses in the amount of $14.40, bill of the East End Hospital in the amount of $351.00 and bill of Dr. Cahill in the amount of $281.00. Our last compensation payment was made on August 8th, 1924.

Enclosed please find copies of our medical certificates.

Very truly yours,

EDWARD BREEN.

AJ

In reply refer to B. B. Kirk.

Stipulation

Sept. 24, 1925.

U. S. Fidelity & Guaranty Co.,
75 William Street,
New York City.

Att. Mr. Jaycoux, Supt.
Re: 38-C-35071 Chris Olson vs. Henry Steers, Inc.

Dear Sir:

We have been informed by our Newark office that you have arranged a settlement with Mr. Olson for his accident which occurred on February 11th, 1924. We believe you were the carriers for the Turner Construction Company.

Please be informed that we have expended the following amounts in adjustment of our Compensation claim.

26 weeks & 3 days compensation at $17. per week, from Feb. 11, 1924 to August 14th, 1924, total	$449.28
East End Hospital Bill	351.00
Dr. Cahill's Bill amounting to	281.00
Traveling expenses of injured	14.40
Total	$1096.68

We shall await your advices regarding these expenses.

Yours very truly,

Stipulation

UNITED STATES FIDELITY & GUARANTY COMPANY,
75 William Street,

Sept. 30, 1925.

Re: 38-C-35071 Chris Olson vs. Henry Steers, Inc.
Our L. 14306.

Aetna Casualty & Surety Co.,
100 William Street, New York.

Att: B. B. Kirk.

Gentlemen:

Replying to yours of September 24th, requesting settlement of your compensation claim in the above captioned case totalling $1095.68, we beg leave to state that under the Laws of the State of New Jersey, we are only responsible for the 26 weeks and 3 days compensation at $17.00 per week, from February 11th, 1924 to August 14th, 1924, total $449.28.

If you agree with the writer in this respect please send the necessary papers to E. J. McLoughlin so that we will be able to close the matter.

Yours truly,

OAKLEY & LEWIS, MHRS.
By, H. D. Combs,
Gen Supt of Claims.

Conclusion.

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation,
Plaintiff,
vs.
TURNER CONSTRUCTION COMPANY, a corporation,
Defendant.

ACKERSON, J.

This case is submitted to the Court for determination without a jury, upon the pleadings and two stipulations as to facts, and there are no controverted facts to determine. It involves the construction of Par. 23 (f), Sec. 3, P. L. 1919, Chap. 93 (Comp. Stat. 1911-1924, Cum. Sup. Vol. 2, p. 3885). This statute is a part of what is commonly called the Workmen's Compensation Act, originally enacted as Chap. 95, P. L. 1911, and the particular section of that Act which is involved in this controversy deals with the right of the employer to reimbursement from the wrongdoer, who caused an injury to an employee, when a settlement is made between the wrongdoer and the employee.

The admitted facts disclosed by the pleadings and stipulations, show that the plaintiff, a corporation of this State, was engaged in building a dock on the Passaic River, and employed in the performance of that work, one Chris Olsen. The

defendant, a corporation of this State, was engaged in operating a derrick unloading gravel from scows in the Passaic River, which derrick was supported by a tug rest upon the bulkhead, near the place where the plaintiff's employees, and particularly Chris Olsen, were working. About 1:10 p. m., February 11, 1924, the cable on the boom of said derrick belonging to the defendant, gave way, and the boom fell causing the bucket of the derrick to strike plaintiff's employee, Chris Olsen, and throw him to a scow below. As a result of the accident, plaintiff's employee, Chris Olsen, sustained two broken ribs, three fractures of the left leg and severe contusions of the elbow, as well as a puncture of the lung. Under the laws of New Jersey, known as

> "An Act prescribing the liability of an employer to make compensation to an employee in the course of employment and establishing an elective schedule of Compensation,"

Approved April 4, 1911, its amendments and supplements, the plaintiff corporation became obligated to pay to the said Chris Olsen, its employee, because of the injuries received, a compensation for temporary disability from February 11, 1924, to August 14, 1924, being a period of twenty-six weeks and three days, at the rate of $17 per week or $449.28. Under the same statute the plaintiff corporation became legally obligated to pay to or on behalf of the employee, such medical, surgical and hospital treatment as was necessary to cure and relieve him of the effect of his injuries,

Conclusion

"And to restore the function of the injured members or organs where such restoration is possible; provided, however, that the employer shall not be liable to furnish or pay for physicians' or surgeons' services in excess of fifty dollars and in addition to furnish hospital service when necessary in excess of fifty dollars, unless the injured person or the physician who treats him or any other person on his behalf, shall file a petition with the Workmen's Compensation Bureau, stating the need for such physician's or surgeon's services in excess of fifty dollars, as aforesaid, and such hospital service or appliances in excess of fifty dollars as aforesaid, and the Workmen's Compensation Bureau after investigating the need of the same and giving the employer an opportunity to be heard, shall determine that such physician's and surgeon's treatment and hospital services are or were necessary, and that the fees for the same are reasonable and shall make an order requiring the employer to pay for or furnish the same."

The plaintiff corporation rendered medical service to said employee and expended therefor the sum of $632. Respecting this payment, the parties hereto, have entered into a Stipulation.

"That the sum of $632, representing medical services, etc., was not paid by the plaintiff in this cause as a result of an order by the Workmen's Compensation Bureau."

Conclusion

And the parties have also stipulated that this

"Sum of $632 representing the medical services rendered was paid direct to the doctors and parties rendering services and did not at any time pass through the hands of the employee or his dependents."

On March 9, 1924, pursuant to Par. (f) of Section 23 of the Compensation Statute, the plaintiff corporation herein served or caused to be served on the defendant, a statement of the compensation agreement between itself and its employee, Mr. Olsen, and by virtue of that notice, the plaintiff, under the Act, became entitled to receive from the defendant herein, upon the payment of any amount in release by the defendant on account of its liability to the said Chris Olsen, a sum equivalent to the amount of compensation which the plaintiff had theretofore paid to the said Chris Olsen.

About September 14, 1925, the defendant paid in release of its liability to the said Chris Olsen, the sum of $3,000 and did not deduct from said amount, for the benefit of the plaintiff herein, the amount of compensation as indicated on the notice served on said defendant and has wholly neglected and refused to pay the full amount indicated in said notice served as aforesaid. The plaintiff demands as damages the sum of $1,081.28, together with interest from September 14, 1925, and costs of suit.

Conclusion

The answer of the defendant admits that the plaintiff is entitled to the sum of $449.28, which covers compensation paid at the rate of $17 a week during temporary and permanent disability from February 11, 1924, to August 14, 1924, but denies that it is liable for the sum of $632, the amount of medical expenses expended in an effort to cure the said Chris Olsen. The contention of the defendant is that the statute does not obligate the defendant to reimburse the plaintiff for such medical services, but only obligates the defendant to reimburse the plaintiff for the weekly payments made during temporary and permanent disability.

The Compensation Act was originally passed in this State as Chap. 95, P. L. 1911. Par. 23 of Sec. 3 at that time contained no provision for reimbursement on the part of the employer from the party whose negligence caused the injury to the employee (P. L. 1911, Chap. 95, p. 144).

The Act was amended, so far as this section is concerned, in 1913. The language of the amended Act is the same as the law now stands, so far as this particular section is concerned (P. L. 1913, Chap. 174, p. 312, Sec. 23). Section 23 was amended again by Chap. 93, P. L. 1919, and the particular part that is involved in this controversy was then for the first time designated as (f) of Sec. 23 (P. L. 1919, Chap. 93, p. 212). The language of the section was not changed, however, the section will also be found in Vol. 2, Comp. Stat. 1911-1924, Cum. Sup., p. 3885., the section provides:

Conclusion

"(f) Where a third person or corporation is liable to the employee or his dependents for an injury or death, the existence of a right of compensation from the employer under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. However, in event that the employee or his dependents shall recover from the said third person or corporation, a sum equivalent to or greater than the total compensation payments for which the employer is liable under this statute, the employer shall be released thereby from the obligation of compensation. If, however, the sum so recovered from the third person or corporation is less than the total of compensation payments, the employer shall be liable only for the difference. The obligation of the employer under this statute to make compensation shall continue until the payment, if any, by such third person or corporation is made. Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employee, or the dependents of the employee, and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account

of his or its liability to the injured employee or his dependents, a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents, which payment shall be deducted by the third persons or corporation from the sum paid in release or judgment to the injured employee or his dependents.''

The issue involved in this case is whether or not, where the proper notice has been served upon the third person or corporation who is responsible for the injury to the employee, that corporation or person, when settlement is made with the injured employee, is obligated to reimburse the employer not only for the weekly payments of compensation allowed by the Act, *but for the medical and hospital services,* which the employer, under the Act, is obligated to perform for the employee.

It will be observed that the section quoted above provides:

> ''However, in event that the employee * * * shall recover from the said third person * * * a sum equivalent to or greater than *the total compensation payments for which the employer is liable under this statute,* the employer shall be released thereby. * * * Such employer shall file with the third person so liable, at any time prior to payment, *a statement of the compensation agreement or award between himself and his employee* * * * and the employer shall * * * receive * * * upon payment of any amount in release * * * a sum equivalent to the amount of the compensation payments which the employer has theretofore paid to the injured employee * * *.''

In determining what the total compensation payment for which the employer is liable under the statute and therefore entitled to have reimbursed under this section, it is necessary to refer to the part of the Act which prescribes the compensation due the injured employee. Section 14 (a) of the Act provides:

> ''Compensation for all classes of injuries shall run consecutively and not concurrently, except as provided in Par. 14 as follows: *First, medical and hospital services and medicines as provided in Par. 14.* After the waiting period, compensation during temporary disability. * * * Following both, either or none of the above compensation consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which compensation to dependents, if any.''

The Workmen's Compensation Act was adopted for the purpose of accomplishing an economic reform in the relationship of master and servant, and substitute a speedy and definite re-

lief to the injured employee at the expense of his master, in the place and stead of a delayed and doubtful recovery in an action under the common law, and the Legislature went so far as to make the employer responsible even though no negligent act of the employer caused the accident and even though the accident was the result of the negligent act of a third person. It is to be noted, however, that as the original act stood in 1911, an injured employee could recover from his employer the compensation provided in the Act, even though the accident which caused his injury was the negligence of a third party and the injured employee could also recover from the third party. Believing that this was economically unsound, the Legislature in 1913 engrafted Section 23 (f) on to the Act, whereby, if a recovery is had from such third party, or a settlement made with him, that the employer shall be reimbursed for the moneys theretofore paid to the injured employee, etc. It was not necessary to pass this 1913 amendment to the act for any other reason, because unless the Legislature clearly indicated its intent, it could not deprive the employer of his right of action against the wrongdoer. On the other hand, however, there was no right on the part of the employer to reimbursement from the wrongdoer, and therefore, statutory enactment was necessary.

It is apparent, therefore that the last above mentioned section of the Act must be liberally construed to effectuate the purpose of its enactment, which was, as already indicated, to reim-

burse the employer for payments which the act required of him, regardless of the question of his negligence, from the person who was the wrongdoer. To permit the employer in such a case, to recover only the stated weekly compensation payments and not the medical and hospital bills, would be accomplishing only a part of the purpose which the Legislature intended by the adoption of Section 23 (f). That this result was never intended, must be apparent when we consider in most cases it is efficient medical and hospital services that lessen the total amount of the weekly compensation payments, and a case could very well arise whereby prompt and efficient medical service during the so-called waiting period, the injured employee is saved from permanent disability as defined by the act, and yet such medical service may have amounted to a considerable sum. the wrongdoer in such a case, if the defendant's contention in the case *sub judice* is correct, would escape all liability to the innocent employer who would have to pay the doctor's bill.

The reimbursement from the wrongdoer to the employer which was intended by Section 23 (f) is completely set forth in Section 14a of the act, which provides:

> "Compensation for all classes of injuries shall run consecutively and not concurrently, except as provided in Par. 14 as follows: *First, medical and hospital services and medicines as provided in Par. 14.* After the waiting period, compensation during temporary disability. * * * Fol-

lowing both, either or none of the above compensation consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which compensation to dependents, if any."

It will be noted that this paragraph covers everything which is to be paid by the employer to the employee, and it seems clear that when the Legislature later put Section 23 (f) into the Act, that it was intended to include medical expenses in the reimbursement which was to be made by a third party to the employer of the person injured by such third party's negligence.

It is true that in the case of *Benjamin & Johnes* v. *Brabbab,* 90 N. J. L., 355, the Court uses this language:

> "It is very doubtful, we think, whether the opinion of the learned judge of the Common Pleas, that the physician's bill was compensation, is sound, but whether so or not, the payment of the physician's bill required no agreement, and would not be subject to review; it is only where there is an agreement that there can be a review after a year. * * *"

But this was a case where an injured employee had filed a petition under the Workmen's Compensation Act, nearly two years after the accident and the employer pleaded the statute of limitations, which is one year, as provided in the Act,

and the petitioner relied upon the fact that the employer had furnished a physician for medical attendance within one year of the accident and that therefore, an agreement from compensation had been thereby made within the contemplation of the Act.

It is to be noted that the expression of the Court in the last cited case as to whether a physician's bill was compensation, is mere *obiter dictum,* as the Court was merely deciding whether there was such an agreement within the year, as would save the employee's action from the bar of the statutory limitation. Further, even if there is a distinction between medical service and weekly payments, so far as the statutory limitation is concerned, that is probably based on the sound theory that if the employer does not agree to make the weekly payments within a year, and a petition is not filed within that time, the claim should be barred on the theory of laches. This is a benefit which the employer derived as a result of the increased benefits that the employee obtains under this statute. While taking away from the employer all the defenses known to the common law and giving them to the employee as benefits, it, in return, insists that the employee institute his suit or perfect his claim by agreement within a year. There is no sound reason why a party, who negligence has caused the loss, should obtain any benefit over what that party had under the common law.

I conclude, therefore, that the expense of medical and hospital services furnished by the em-

Conclusion

ployer to the employee is comprehended within the "total compensation payments," which under Section 23 (f) a third party whose negligence has caused an injury to an employee, is to reimburse to the injured person's employer.

Inasmuch, therefore, as the answer admits the proper statement of the agreement between the injured employee and the plaintiff here, was served upon the defendant and inasmuch as it appears that such a statement shows that $449.28 was paid pursuant to an agreement on account of disability up to August 14, 1924, and that the sum of $632, was paid pursuant to the agreement, for medical and hospital expenses, therefore, I find that the plaintiff is entitled to a judgment against the defendant for the sum of $1,081.28 together with interest thereon at six percent from September 14, 1925, that being the date of settlement between defendant and injured employee, from which date interest is claimed, which interest amounts to $95.68, making a total of $1,176.96 for which amount judgment may be entered in accordance herewith.

Judge.

Rule for Judgment.

(*Entered, March 14, 1927*)

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff, vs. TURNER CONSTRUCTION COMPANY, a corporation, Defendant.	Action at Law.

This action was tried before Hon. Henry E. Ackerson, Jr., without a jury, upon the pleadings and stipulations as to the facts and there are no controverted facts to determine.

The Court having heard the arguments of the counsel for the respective parties upon the matters of law involved and having considered the same, finds in favor of the plaintiff and against the defendant in the sum of $1,081.28, together with interest thereon at 6% from September 14, 1925, amounting to $95.68, making a total of $1,176.96.

Whereupon it is adjudged that the plaintiff, Henry Steers, Inc., a Corporation, recover of the defendant, Turner Construction Company, a Corporation, the sum of $1,176.96 and its costs to be taxed.

HENRY E. ACKERSON, Jr.,
Circuit Court Judge.

On Motion of
Collins & Corbin,
Attorneys of Plaintiff.

Notice and Grounds of Appeal.

(*Filed, April 23, 1927*)

HUDSON COUNTY CIRCUIT COURT

HENRY STEERS, INC., a corporation, Plaintiff-Appellee, vs. TURNER CONSTRUCTION COMPANY, a corporation, Defendant-Appellant.	Action at Law.

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

PLEASE TAKE NOTICE that the defendant-appellant, Turner Construction Company, hereby appeals to the New Jersey Court of Errors and Appeals in the last resort in all causes, from the whole and every part of the final judgment entered in favor of the plaintiff-appellee, Henry Steers Inc., March 14th, 1927, in the sum of $1,176.96 damages.

FURTHER TAKE NOTICE that the following are the defendant-appellant's grounds of appeal which will be relied upon on the argument of said appeal.

1. Because the Circuit Court erroneously entered judgment in favor of the plaintiff-appellee and against the defendant-appellant in the sum of $1,176.96 together with costs to be taxed.

2. Because the Trial Judge before whom said cause was tried, erroneously found that the expense of medical and hospital services furnished by the employer to the employee is comprehended in the "total compensation payments," which, under paragraph 23-F, Section 3, P. L. 1919, a third party, whose negligence has caused an injury to an employee, is required to reimburse the injured person's employer.

3. Because the Trial Judge before whom said cause was tried, erroneously found that the plaintiff-appellee was entitled to recover the sum of $632 the amount paid for medical and hospital expenses under paragraph 23-F, Section 3, P. L. 1919.

4. Because the Trial Judge before whom said cause was tried, erroneously failed to find that paragraph 23-F, Section 3, P. L. 1919 did not require the defendant-appellant, Turner Construction Company, to reimburse the plaintiff-appellee for the medical and hospital services and disbursements rendered by the plaintiff-appellee to its employee pursuant to Chap. 95, P. L. 1911 and amendments thereto.

Dated, April 16th, 1927.

Respectfully yours,

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendant-Appellant.

New Jersey Court of Errors and Appeals.

Action at Law: On Appeal.

HENRY STEERS, INC., a corporation,
Plaintiff-Appellee,

—VS.—

TURNER CONSTRUCTION COMPANY, a corporation,
Defendant-Appellant.

BRIEF OF McDERMOTT, ENRIGHT & CARPENTER FOR DEFENDANT-APPELLANT.

Statement.

This is an appeal taken by Turner Construction Company from a judgment for $1,176.96 entered in favor of the plaintiff on March 14, 1927, in the Hudson County Circuit Court. This case was submitted to the Honorable Henry E. Ackerson, Jr., for determination upon the pleadings and stipulations of fact.

Brief Statement of Facts.

The admitted facts disclosed by the pleadings and stipulations show that the plaintiff, a corporation of this State, was engaged in building a dock in the Passaic River and employed in the performance of that work, one, Chris Olsen. The defendant, a corporation of this State, was

engaged in operating a derrick unloading gravel and scows in the Passaic River, near the place where the plaintiff's employees were working. On February 11, 1924, the cable on the boom of the derrick belonging to the defendant gave way and the boom fell, causing the bucket to strike the plaintiff's employee Chris Olsen, as a result of which he sustained injuries. In and by virtue of the Laws of the State of New Jersey, being Chap. 95, P. L. 1911, entitled: "An Act Prescribing the Liability of an Employer to make compensation to an Employee in the course of employment and establish an elective schedule of compensation, approved April 4, 1911, its amendments and supplements," the plaintiff corporation became obligated to pay to the said Chris Olsen, its employee, because of the injuries received, compensation for temporary disability amounting to $449.28. Under the same statute the plaintiff corporation was obligated to pay for medical, surgical and hospital treatment to said employee, which was necessary to cure and relieve him from the effects of said injuries, the sum of $632.

On March 19, 1924, the plaintiff corporation caused to be served on the defendant a statement of the compensation agreement (State of Case, p. 12) between itself and its employee, Chris Olsen. This notice was given pursuant to Sec. 23-F, Chap. 93, Laws of 1919. The plaintiff contends that by virtue of the notice given under said Act, it became entitled to receive upon payment of any amount to Chris Olsen by the defendant on account of its liability to said Chris Olsen, a sum equivalent to the amount of compensation which the plaintiff paid to Chris Olsen. The plaintiff construed the amount of

said compensation to include the amount paid for medical, surgical and hospital attention.

On or about September 14, 1925, Turner Construction Company paid to Chris Olsen the sum of $3,000, and did not pay any portion thereof to Henry Steers, Inc.

The plaintiff claims reimbursement for the compensation which it paid, amounting to $449.28, and for the amount expended for medical services, to wit, $632, together with interest from September 14, 1925. The defendant by its answer admitted that the plaintiff was entitled to the sum of $449.28, covering the compensation paid by the plaintiff to Chris Olsen, but denied that it was liable to the plaintiff in the sum of $632, the amount paid by the plaintiff for medical services, and set forth as a separate defense that Sec. 23-F, Chap. 95, Laws of 1911 as amended (which amendment is found in Sec. 23-F, Chap. 93, Laws of 1919, p. 212) does not require the defendant to reimburse the plaintiff for medical services and incidental disbursements, but only requires that the defendant shall be liable to the plaintiff for the amount of compensation payments, to wit, $449.28.

The entire question involved in this case is a construction of Sec. 23-F, Chap. 93, Laws 1919, page 212..

Judge Ackerson, in the Circuit Court, held that plaintiff was entitled to recover for the medical services and incidental disbursements, and awarded judgment for the full amount claimed.

POINT I.

Medical and hospital services furnished by the employer to the employee are not comprehended in the "total compensation payments" under Sec. 23-F, Chap. 93, P. L. 1919.

The section in question provides as follows:

> "Where a third person or corporation is liable to the employee or his dependents for an injury or death, the existence of a right of compensation from the employer under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. However, in event that the employee or his dependents shall recover from the said third person or corporation, a sum equivalent to or greater than the total compensation payments for which the employer is liable under this statute, the employer shall be released thereby from the obligation of compensation. If, however, the sum so recovered from the third person or corporation is less than the total of compensation payments, the employer shall be liable only for the difference. The obligation of the employer under this statute to make compensation shall continue until the payment, if any, by such third person or corporation is made. Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employee, or the dependents of the employee, and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account of his or its liability to the injured employee or his dependents, *a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents,* which payments shall be deducted by the third persons or corporations from the sum paid in release or judgment to the injured employee or his dependents."

This section, it will be noted, expressly refers to and provides for a reimbursement to the employer of "compensation payments which the employer has heretofore paid to the injured employee or his dependents". The words "compensation payments" refer exclusively to the weekly compensation which is payable to the employee or his dependents, and does not in any way refer to medical expenses.

From an examination of the Act in its amended form, it will be seen that the words "compensation and compensation payments" are frequently referred to and invariably imply the weekly compensation due to the employee.

Paragraph seven of Sec. 2, Chap. 95, Laws 1911, page 136, in short sets forth the system of compensation and states that compensation shall be made by the employer according to a schedule contained in paragraph eleven, except in certain exceptions which are not covered by the Act. An examination of paragraph eleven discloses that it contains a schedule of various weekly payments to be made, based upon the extent and nature of the injury suffered by the employee. The only reference to medical charges in any of the subdivisions of paragraph eleven is

contained in subdivision X, which refers especially to hernia. A portion of that section is significant, as it contains the following:

> "If the employee refuses to permit an operation, the employer shall meet the requirements above specified, pay the reasonable costs of the truss or other appliance found necessary, and also *pay compensation for twenty weeks, &c.*"

The wording of this section shows that compensation is kept separate and distinct from other disbursements and charges arising out of the accident.

The Circuit Court, in its conclusion below (State of Case, p. 27, l. 30), refers in particular to Sec. 14-A of the Act as indicative of the fact that medical and hospital services are included as compensation. We do not find anything under this section which would lead to such a conclusion, but are of the opinion that a close analysis of the section, to wit, Sec. 14-A, Chap. 93, L. 1919, page 208, shows that such items are not considered compensation as the section is worded. That section provides as follows:

> "*Compensation* for all classes of injuries shall run consecutively, and not concurrently, except as provided in paragraph fourteen, as follows: First, medical and hospital services and medicines as provided in paragraph fourteen. After the waiting period, *compensation* during temporary disability. If total period of disability extends beyond seven weeks, *compensation* to cover waiting period. Following both, either or none of the above *compensation* consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which *compensation* to dependents, if any. In no case shall the total number of weekly payments be more than five hundred, except as provided in paragraph eleven (b) and twelve (k) of this act."

The object of this section is to set forth a general synopsis of how compensation shall be paid, but the sentence referring to medical and hospital services and medicines does not contain the word *compensation* or speak of it as compensation, although in each of the following sentences the word compensation is specifically used. Our argument is, and we are supported in that by certain decisions which will be referred to shortly, that this item of medical, hospital services and medicines is an item of costs as distinguished from compensation. Had the Act intended those items to be compensation, the sentence no doubt would have been worded somewhat as follows:

> "First: Compensation for medical and hospital services and medicines as provided in paragraph 14."

That section proceeds to say that after a waiting period *compensation* shall be paid during the temporary disability. If disability extends beyond seven weeks, compensation to cover the waiting period, that compensation shall be covered consecutively for each permanent injury. Again the section refers to expenses of last sickness and burial, but does not include the word compensation, which would indicate that this is also an item of costs. The next sentence again refers to compensation to dependents, if any.

The statute uses the word "compensation" in each case where the weekly payments to the employee are referred to, but the word compensation is not used in the two instances where the amounts would not be paid to the employee or his dependents.

Under Sec. 18, Chap. 95, P. L. 1911, which provides for the submission to the Compensation Bureau, the Act provides that a claim for *compensation* may be submitted to the Bureau to determine, among other things, the amount of *compensation* therefor *according to the schedule therein provided,* and it will be seen that this again refers to the schedule which we have heretofore shown refers only to weekly payments.

Sec. 21-B, Chap. 93, P. L. 1919, provides for a system of commutation, and provides that the *compensation* may be commuted, but nothing in that section is said in reference to medical expenses, and at the close of paragraph "D" of that section the following sentence is found:

> "Commutation shall not be allowed for the purpose of enabling the injured employee or the dependents of a deceased employee to satisfy a debt, or to make payment to physician, lawyers or any other persons."

Does not that sentence in itself indicate that the object of the Legislature was to take these items out of the field of compensation and to make medical expenses and lawyer's fees, costs or other charges which the employer was obligated to pay independent of compensation?

We mention these sections in particular as being the outstanding indications in the Act that compensation and medical services are separate

and distinct. A reading of the Act in its amended form will also show that there are other references to compensation which indicate that it was considered separate and apart from medical services.

Sec. 23-F, however, goes even further than this, in that it provides that the employer shall be reimbursed upon the settlement of a third party suit in

> "A sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents."

Therefore, if there still remains any question in the mind of the Court as to whether medical services are to be classed as compensation, it appears to us that it would have to be immediately dispelled, as the section involved is specifically limited to *compensation payments to the injured employee or his dependents.* It is admitted by the attorney for the plaintiff and stipulated in the record in this cause that the only compensation payments made to the injured employee or his dependents were the weekly payments amounting to $449.28. In fact, they were all made to the employee himself. The item for medical expenses, amounting to $632, was paid by the employer direct to the physician or parties rendering service, as the stipulation (State of Case, p. 9) sets forth. To hold such an item recoverable when the payment was not made to the employee or his dependents, would be holding in absolute contravention of the clear wording of the Act.

This section has never been construed by the courts of our State. It was referred to in *Newark Paving Co.* v. *Klotz,* 37 N. J. L. Journal 165,

but in such a way as to have no bearing whatsoever upon the issue involved in this case. We have been unable to find a case construing a similar section in any other jurisdiction. There are, however, a few cases which have some bearing on the question.

In the case of *Benjamin & Johnes* v. *Brabbam,* 90 N. J. L. 355, 103 At. 688, the petitioner did not file her petition for compensation within one year from the date of the accident, as required by statute. She endeavored to prove that the payment of medical expenses was an agreement to pay compensation and that her suit was within time, having been instituted within one year from the date of the payment of such medical expenses. Justice Swayze, speaking for the Court, held as follows:

> "The difficulty with this claim of the petitioner is that it is necessary that there should have been an agreement upon the 'compensation payable under the act', which shall be subject to diminution as well as to increase. The payment of the physician's bill required no agreement, as the present prosecutor was under an obligation to pay that bill under Section 14 of the statute, without any agreement. *It is very doubtful, we think, whether the opinion of the learned judge of the common pleas that the physician's bill was compensation is sound,* but whether so or not the payment of the physician's bill required no agreement, and would not be subject to review; it is only where there is an agreement that there can be a review after the year and a case where there is an agreement is contrasted by the statute with a case where there is a dispute."

While the portion underlined is only *obiter dictum,* it does show that the learned Justice placed medical services in a distinctly different category from compensation payments.

In *Paolis* v. *Tower Hill Connellsville Coke Co.,* 108 At. 638, Supreme Court of Pennsylvania, the question was raised whether payments for medical expenses were compensation payments. In that case, the petition was dismissed at the trial, as it was not filed within one year from the date of the accident. The petitioner contended that the payment of hospital expenses was a "payment of compensation".

The Court held that such a payment was not a payment of compensation, and that "compensation" does not refer to the payment of reasonable surgical, medical and hospital services, medicines and supplies. The provisions of the Pennsylvania Act are evidently very much similar to, although not exactly like, the provisions of our Act. The Court in that case reviews quite a few provisions of the Act to show that it was not the intention of the Legislature to include medical services as compensation. In the course of the opinion, the Court refers to clause "E" of their Act, which relates to the rendition of medical services by the employer. The last sentence in that section reads as follows:

> "If the employee shall refuse reasonable surgical, medical and hospital services, medicines and supplies tendered to him by his employer, he shall forfeit all right to compensation for any injury or any increase in his incapacity shown to have resulted from such refusal."

The Court held as follows:

> "It will be noticed the word 'compensation' is used only in the last sentence (referring to Clause E) where it refers to the amounts to be paid to the employee, and not to the sum to be paid for 'reasonable surgical, medical and hospital services, medicines and supplies', which are always denominated 'cost', thereby showing the legislative distinction between the two classes of payments. Under no circumstances, in disability cases, is 'compensation' payable during the first 14 days, whether or not such 'cost' is incurred."

Under the Workmen's Compensation Law in this State, medical expenses are payable during the first seven days, although no compensation is payable during that period of time.

In the case of *Petraska* v. *National Acme Co.*, 113 At. 536, not officially reported, the question came up again as to whether the payment of medical expenses was compensation sufficient to warrant the Court's holding that a claim for compensation, not made within six months, as required by statute, was in time if made within six months from the date of the payment of the medical expenses. The Court held as follows:

> "All that the record shows concerning payments of any character is that the insurance company paid all or part of the claimant's medical expenses during the first 14 days of his disability. The amount so paid does not appear. The defendants were required by Statute to pay such expenses, not to exceed $100. G. L. 5784. Moreover, such payments are not compensation in the sense in which the term is used in this act. The payments shown did not, therefore, constitute 'payments of compensation * * * made voluntarily'."

Medical and hospital services, therefore, should not be included in "total compensation payments" as referred to in Sec. 23-F, because

(A) They are not made direct to the employee or his dependents.

(B) They are not payments of compensation.

(C) The Courts have characterized them as other than compensation payments.

POINT II.

It would work a legal wrong to include medical and hospital services as compensation payments under Section 23-F, Chap. 93, P. L. 1919.

Our Workmen's Compensation Act places the obligation upon the employer to furnish medical, surgical and hospital aid to the injured employee. It requires that the employer shall furnish such aid and obligate itself for the payment of such services.

If the employee effects a settlement with the third party for the injuries he sustained, he can only settle for his pain and suffering, disability and loss of earning power, and could not claim such items as medical, surgical and hospital expenses which did not cost him anything and for which he did not obligate himself. In other words, he could only claim the losses which he actually suffered.

Suppose, for example, the employee instituted suit against the third party for his personal injuries. It certainly could not be argued that

he could set up in his cause of action and legally prove before the Court and jury medical, surgical and hospital bills which he did not incur, did not pay, and for which he would not be obligated. Should the employee be allowed to recover for medical, surgical and hospital expenses, he would clearly receive more than his actual loss had been.

This, of course, would not be the case if the employer was entitled to subrogation of the right granted to the employee of a third party action. If that was the case, the employer could sue in the employee's name and recover for medical, surgical and hospital expenses, together with pain and suffering, disability and loss of earning power. The statute, however, does not give this right, but merely gives the employee power to sue for the damages he sustained, realizing that his loss might not be amply covered under the Compensation Act.

The employer's action being given by the statute to recover compensation paid, the statute should not be construed to include more than the Legislature gave by the plain words of the statute.

POINT III.

The Circuit Court erroneously entered judgment in favor of the plaintiff and against the defendant in the sum of $1,176.96.

For the reasons set forth in the foregoing points, the judgment in favor of the plaintiff should be reversed and a judgment entered for $449.28, together with interest from September 14, 1925.

Other grounds of appeal not specifically argued are not waived, but included inferentially in the argument herein.

POINT IV.

We respectfully submit that for the foregoing reasons the judgment should be reversed.

Respectfully submitted,

McDERMOTT, ENRIGHT & CARPENTER,
Attorneys of Defendant-Appellant.

CARL S. KUEBLER,
Of Counsel.

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New Jersey Court of Errors and Appeals

HENRY STEERS, INC., a corporation, *Plaintiff-Appellee,* *vs.* TURNER CONSTRUCTION COMPANY, a corporation, *Defendant-Appellant.*	*Action at Law.* *On Appeal from Hudson County Circuit Court.*

BRIEF OF COLLINS & CORBIN IN BEHALF OF PLAINTIFF-APPELLEE.

(1)

Statement of the Case.

This is an appeal by the defendant-appellant (hereinafter referred to as the defendant), to review a judgment of the Hudson County Circuit Court entered in favor of the plaintiff-appellee (hereinafter referred to as the plaintiff), for the sum of $1,176.96 (p. 31). The case was tried before Hon. Henry E. Ackerson, Jr., without a jury, upon the pleadings and stipulation of facts filed in the cause. There were no controverted facts to determine. It involved solely the construction of Par. 23 (F), Sec. 3, P. L. 1919, Chap. 93 (Comp. Stat. 1911-1924, Cum. Sup. Vol. 2, p. 3885).

This statute is a part of what is commonly called the Workmen's Compensation Act, originally enacted as Chap. 95, P. L. 1911, and the particular section of that Act which was construed by the trial court dealt with the right of an employer to reimbursement for weekly payments and medical expenses, from a tort feasor,

who caused the injury to his employee, when a settlement is made between the tort feasor and the employee.

The admitted facts disclosed by the pleadings show that the plaintiff, a corporation of this State, was engaged in building a dock on the Passaic River, and employed in the performance of that work, one Chris Olson (p. 2, ll. 20-40). The defendant, a corporation, was engaged in operating a derrick unloading gravel from scows in the Passaic River, which derrick was supported by a leg that rested upon a bulkhead, near the place where the plaintiff's employees, and particularly Chris Olson, were working. On February 11, 1924, about 1:10 P. M., the cable on the boom of said derrick belonging to the defendant, gave way, and the boom fell, causing the bucket of the derrick to strike Chris Olson and throw him from the bulkhead to a scow (p. 3, ll. 1-20). As a result of the accident, plaintiff's employee, Chris Olson, sustained two broken ribs, three fractures of the left leg and severe contusions of the elbow, as well as a puncture of the lung (p. 3, ll. 20-25). Under the laws of New Jersey, known as "An Act prescribing the liability of an employer to make compensation to an employee in the course of employment and establishing an elective schedule of compensation," approved April 4, 1911, its amendments and supplements, the plaintiff corporation became obligated to pay to the said Chris Olson, its employee, because of the injury received, a compensation for temporary disability from February 11, 1924 to August 14, 1924, being a period of twenty-six weeks and three days at the rate of $17 a week, or $449.28 (p. 3, ll. 25-35). By virtue of the provisions of the same statute, the plaintiff corporation became legally obligated to

pay to or on behalf of the employee so injured, medical, surgical and hospital treatment as was necessary to cure and relieve him of the effect of his injuries, and to restore the functions of the injured members or organs. Pursuant to this obligation, the plaintiff corporation rendered medical service to said employee and reasonably expended therefor, the sum of $632 (p. 3, l. 40 to p. 4, l. 15). On March 19, 1924, a little over a month after the accident happened, pursuant to Par. F of Sec. 23 of the Compensation Statute, the plaintiff corporation herein served, or caused to be served, on the defendant, a statement of the compensation agreement between itself and its employee, Mr. Olson, and by virtue of that notice, the plaintiff under the Compensation Act, became entitled to receive from the defendant herein, upon the payment of any amount in release by the defendant on account of its liability to the said Chris Olson, a sum equivalent to the amount of compensation which the plaintiff corporation had paid to, or on behalf of the said Chris Olson (p. 4, ll. 15-30).

About September 14, 1925, the defendant paid in release of its liability to the said Chris Olson, the sum of $3,000 and did not deduct from said amount for the benefit of the plaintiff herein, the amount of compensation as indicated on the notice served on the said defendant by the plaintiff, but neglected and refused to do so (p. 4, ll. 30-40). The form of the notices served is contained in the stipulations (p. 12 to p. 17). They disclose that the amount expended by the plaintiff under the Compensation Act, because of the injuries received at the hands of the defendant, were as follows (p. 16, ll. 10-30):

"26 weeks and 3 days compensation
at $17 per week, from February 11,
1924 to August 14, 1924—Total $449.28
East End Hospital Bill 351.00
Dr. Cahill's Bill amounting to ... 281.00"

The suit was brought by the plaintiff to recover from the defendant the sums of money indicated in the notice that it had expended in behalf of the employee, together with interest from September 14, 1925, and costs.

The answer of the defendant admits that the plaintiff is entitled to a judgment in the sum of $449.28 with interest from September 14, 1925, which sum covers merely the weekly amounts paid by the plaintiff to the injured employee at the rate of $17 a week, during the temporary and permanent disability from February 11, 1924, to August 14, 1924, but denies that the defendant is liable for the sum of $632, which represents the amount of hospital bill and medical expense paid by the plaintiff in an effort to cure the injured employee and relieve him from the effects of his injury, as well as to restore the function of the injured members or organs. It is not contended by the defendant that this sum was unreasonably expended, but merely that the compensation statute does not obligate a tort feasor (the defendant) to reimburse the employer (the plaintiff) for such medical and hospital services, but only obligates the tort feasor (defendant) to reimburse the employer (plaintiff), for the weekly payments made during temporary and permanent disability (pp. 5 and 6).

Judge Ackerson after argument of the question and the submission of briefs, prepared a lengthy and careful opinion in which he held that the defendant's contention was not correct, but

that under Sec. 23 F, a third party whose negligence has caused an injury to an employee, is obligated to reimburse the injured person's employer for the expense of the medical and hospital services furnished by the employer to the employee, in the event that there is a settlement between the third party whose negligence caused the injury and the employee (p. 18 to p. 30).

(2)

BRIEF OF THE ARGUMENT.

I.

Medical and Hospital Services furnished by the employer to the employee are comprehended in the "Total Compensation Payments" under Sec. 23 F, Chap. 93, P. L. 1919.

The Compensation Act was originally passed in this State as Chap. 95, P. L. 1911. Par. 23 of Sec. 3 at that time contained no provision for reimbursement to the employer from the party whose negligence caused the injury to the employee (P. L. 1911, Chap. 95, p. 144).

The Act was amended, so far as this section is concerned, in 1913. The language of the amended Act is the same as the law now stands, so far as this subject is concerned (P. L. 1913, Chap. 174, p. 312, Sec. 23). Section 23 was amended again by Chap. 93, P. L. 1919, and the particular part that is involved in our controversy was then for the first time designated as (f) of Sec. 23 (P. L. 1919, Chap. 93, p. 212). The language of the section was not changed, however. The section which will also be found in Vol. 2, Comp. Stat. 1911-1924, Cum. Sup., p. 3885, provides:

"(f) Where a third person or corporation is liable to the employee or his depend-

ents for an injury or death, the existence of a right of compensation from the employer under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. However, in event that the employee or his dependents shall recover from the said third person or corporation, a sum equivalent to or greater than the total compensation payments for which the employer is liable under this statute, the employer shall be released thereby from the obligation of compensation. If, however, the sum so recovered from the third person or corporation is less than the total of compensation payments, the employer shall be liable only for the difference. The obligation of the employer under this statute to make compensation shall continue until the payment, if any, by such third person or corporation is made. Such employer shall file with the third person or corporation so liable, at any time prior to payment, a statement of the compensation agreement or award between himself and his employee, or the dependents of the employee, and the employer shall thereafter be entitled to receive from such third person or corporation, upon the payment of any amount in release or in judgment by the third person or corporation on account of his or its liability to the injured employee or his dependents, a sum equivalent to the amount of compensation payments which the employer has theretofore paid to the injured employee or his dependents, which payments shall be deducted by the third persons or corporation from the sum paid in release or judgment to the injured employee or his dependents."

The issue involved in this case is whether or not, where the proper notice has been served upon the third person or corporation who is responsible for the injury to the employee, that corporation or person, when settlement is made

with the injured employee, is obligated to reimburse the employer *not only for* the weekly payments allowed by the Act, but also for the medical and hospital services which the employer, under the Act, is obligated to and does perform for the employee.

It will be observed that the section quoted above provides:

> "However, in event that the employee * * * shall recover from the said third person * * * a sum equivalent to or greater than *the total compensation payments for which the employer is liable under this statute,* the employer shall be released thereby. * * * Such employer shall file with the third person so liable, at any time prior to payment, *a statement of the compensation agreement or award between himself and his employee* * * * and the employer shall * * * receive * * * upon payment of any amount in release * * * a sum equivalent to the amount of the compensation payments which the employer has theretofore paid to the injured employee * * * ."

In determining what the total compensation payment for which the employer is liable under the statute and therefore entitled to have reimbursed under this section, it is necessary to refer to the part of the Act which prescribes the compensation due the injured employee. Section 14 (a) of the Act provides:

> "Compensation for all classes of injuries shall run consecutively and not concurrently, except as provided in Par. 14 as follows: *First, medical and hospital services and medicines as provided in Par 14.* After the waiting period, compensation during temporary disability. * * * Following both, either or none of the above compensation consecutively for each permanent injury. Following any or all or none of the above, if death results from the accident, expenses of

last sickness and burial. Following which compensation to dependents, if any."

From the above, it would clearly appear that the Legislature in drafting the Act when it said: "First, medical and hospital services and medicines as provided in Par. 14" should be compensation due the injured employee by his employer, clearly intended that under Sec. 23 (f), that medical expenses should be repaid to the employer by the third party who caused the injury, when a settlement was made with the employee.

We contend that this Act should be given a liberal construction to effectuate the purpose intended by the Legislature. Previous to the enactment of the statute an employee could not recover from his master for personal injuries sustained while in the course of his employment under all circumstances. He could not recover if the injury was caused by a fellow servant. He was barred if he, in anywise, contributed himself to the happening of the accident. He was obligated to assume the risk of his master's negligence, if that risk was an open and obvious one. Under the Compensation Act the Legislature abolished all defenses good against the employee under the comon law, and substituted in its stead a system of reimbursement for injuries regardless of whose fault caused said injuries. It substituted for *a possible cause* of action in which the damages were to be assessed by a Court and jury, *an immediate relief* to the employee. At once medical service must be rendered. If the injury disables the employee for a period of ten days, the employer is obligated to pay a certain proportion of his weekly wages during his period of temporary disability. If, after the medical service has been rendered and the temporary disability ceased, there is a permanent disability, the employer is obligated to pay weekly a proportion of the wage according to a schedule laid down in the Act, to reimburse for that partial loss of function. It is absolutely clear that the Legislature intended to create an economic reform in the legal relations of master and servant, and substitute a speedy and definite relief to the injured employee at the expense of his master, in the place and stead of a delayed and doubtful recovery in an action under the common law. The Legislature went so far as to make the employer responsible, even though the accident was caused by the negligent act of a third person, without any fault of the employer. This was the purpose and intent of Section 23 (f). As disclosed by the original statute in 1911, this was not provided for, and apparently the Legislature felt that it was economically unsound to permit the employee to receive his weekly payments and medical services, and thereafter sue the third person who caused the entire loss, recover against that party and never have to reimburse the employer. It seems quite clear that the purpose of passing the amendment of 1913 was not so much to indicate that the employee had a right against the third party, as it was to indicate that in the event the third party was found responsible or settled the case, the employer should be reimbursed. It was not necessary to pass the 1913 amendment for any other reason, because unless the Legislature clearly indicated its intent, it could not deprive the employee of his right of action against the wrongdoer. On the other hand, there was no right on the part of the employer to reimbursement from the wrongdoer, and therefore, statutory enactment was necessary.

The contention of the defendant in this case that the statute merely requires reimbursement for the weekly payments made covering temporary and permanent disability, and does not include hospital service, would lead to numerous absurd results. In this very case, it appears that the weekly payments only amounted to $449.28, and the injuries that the man received consisted of two broken ribs, three fractures of the left leg, severe contusions of the elbow, as well as a puncture of the lung. The severity of the injuries at once indicates that the expenditure of $632 for medical services and treatment was the very reason that the weekly payments are as small as $449. If the employer had not given that medical treatment, with the injuries involved, without question, the weekly payments would have amounted to several thousand dollars, because the result of the broken ribs, several fractures of the leg and puncture of the lung would have left the employee permanently disabled. Instead of that, by the employer giving adequate medical treatment, there was no permanent disability in this case, in spite of the serious injuries, and the only disability was temporary disability, while the man was in the hospital. It is economically unsound to say that the wrongdoer in this case, by whose act this entire expenditure was caused, should escape responsibility for the medical expenses because the employer performed his full duty and rehabilitated his injured employee so as to prevent any permanent defects. Such a holding would tend to prevent employers from giving that medical care which would result in an effective cure. It is proper and just that the wrongdoer should be compelled to stand the medical expenses and hospital treatment, where, as in this case, it is

conceded it was reasonably necessary, and in fact, produced wonderful results.

This statute should be liberally construed, as is evidenced by the case of *Churchill* v. *Stevens*, 91 N. J. L. 195; 102 Atl. 657, where the Supreme Court held that in this Section 23 (f), third person causing the injury should be construed so as to include a fellow employee.

The section prescribing the liability of the employer for medical services, which is Section 14, provides in substance:

> "The employer shall furnish such medical, surgical and other treatment, and hospital *service as shall be necessary to cure and relieve the workman of the effects of the injury and to restore the functions of the injured member or organ, where such restoration is possible.* * * * If the employer refuses or neglects to comply with the foregoing provision, the employee may secure such service and treatment as may be necessary and as may come within the terms of this Paragraph, and the employer shall be liable to pay therefor * * * ."

It will be observed that if the defendant's contention in this case is correct, the employer would be rewarded in the event he failed to furnish adequate medical treatment. It seems absurd to say, that if the employer on the other hand, performed his full duty as he did in this case, he should be punished by having to bear the cost of the medical treatment, when the wrongdoer settles with the employee. In a suit by the employee against the wrongdoer, if the defendant's contention is correct, there would have to be an inquiry as to whether the cost of the medical treatment was paid by the employer or the employee, and if part was paid by each, what part. It has been the practice in the

trial of these cases, to eliminate entirely any consideration of what the employee received from his employer by way of compensation, and we think properly so, because when a recovery is had whatever the employee has expended will be reimbursed.

The defendant relies on two cases, namely, *Benjamin & Johnes* v. *Brabbab,* 103 Atl. 688, and *Randolph* v. *Hammersley Mfg. Co.,* 111 Atl. 15. We think, however, that these cases, so far as the facts decided, are distinguishable from the case at bar. In the Randolph case, *supra,* the suit was an action at law, wherein the plaintiff employee was seeking to recover against the defendant employer, payments of compensation alleged to be due, pursuant to an agreement that had been entered into between them, pursuant to the Compensation Act. The trial court found there was no agreement and directed a verdict in favor of the defendant. The Court on review, said (p. 15):

> "We are unable to find any evidence in the record that would justify even an inference that the parties had agreed upon any compensation for the injury. This, in our view, disposes of the question involved in this appeal, with the result that it was not error for the trial court to direct a verdict for the defendant."

It is clear that the above-entitled case has no bearing on the question under consideration.

In the Benjamin case cited *supra,* the proceeding was under the Compensation Act. It appeared that the plaintiff was injured May 1, 1913, and nearly two years after the accident, namely, April 30, 1915, she filed a petition for compensation. To this petition respondent pleaded in its answer the bar to the statute of limitation, which is one year. Petitioner then filed a second petition in which she recited that two weeks after the accident an agreement was entered into between her and the employer, in which the employer agreed to reimburse her for the amount she had become indebted to a physician for medical attendance made necessary by the accident. She thereupon prayed that the agreement be reviewed and compensation allowed for the entire injury. The Common Pleas Court in hearing the compensation case on this amended petition, allowed compensation on the theory that the agreement of the employer to pay the physician's bills which had been incurred by the employee, was an agreement to pay compensation. The Court, upon appeal, held that this was not accurate, as it was not the character of agreement contemplated by the statute which would prevent the bar of the statute from running. In the course of the opinion, Justice Swayze did say (p. 689):

> "It is very doubtful, we think, whether the opinion of the learned judge of the Common Pleas, that the physician's bill was compensation, is sound, but whether so or not, the payment of the physician's bill required no agreement, and would not be subject to review; it is only where there is an agreement that there can be a review after a year * * * ."

It must be borne in mind, however, that the Court in that case was dealing with a claim of an employee to be reimbursed for medical expenses which she had expended in the course of her cure. Even if the Court did, in using this language, intimate that there was a differentiation between medical service and weekly payments, it was *obter dictum,* and the point raised in this case was not before the Court. Further, even if there is a distinction between medical service and weekly payments, so far as the statute of limitations is concerned, that is probably based on the

sound theory that if the employer does not agree to make the weekly payments within a year, and a petition is not filed within that time, the claim should be barred on the theory of laches. This is a benefit which the employer derives as a result of the increased benefits that the employee obtains under this statute. While taking away from the employer all the defenses known to the common law and giving them to the employee as benefits, it, in return, insists that the employee institute his suit or perfect his claim by agreement within a year. *There is no sound reason why a party, whose negligence has caused the loss, should obtain any benefit over what that party had under the common law.*

We have examined with considerable care, the cases in New Jersey and elsewhere, in an endeavor to find some direct authority on this proposition, but without avail. It is a novel question, and while the amount involved in this proceeding is only $632, the principle involves thousands of dollars. The only other case we have found in New Jersey, not cited in this brief, is *Hartford Accident & Indemnity Co.* v. *Englander,* 93 N. J. Eq., 188. That was a bill in equity in behalf of an insurance carrier of the defendant's employer. It sought to recover from the defendant, compensation paid to him by it in behalf of the employer, amounting to $425 weekly payments, and $38 hospital and medical expenses. The bill was dismissed on the ground that the remedy at law was adequate and that the Court did not pass upon the question herein involved.

We respectfully submit that Hon. Henry E. Ackerson, Jr., correctly construed Sec. 23F of the Compensation Act so as to hold that the defendant in this case is required to pay to the plaintiff, not only the weekly payments made by it to

the injured employee, but the hospital and medical bills incurred by the plaintiff in performing its statutory duty of effecting a cure and relieving the workman of the effects of his injury so as to restore the functions of injured members or organs, where such restoration was possible, and that the judgment rendered in the amount of $1,176.96 in favor of the plaintiff should not be disturbed.

(3)

Conclusion.

It is respectfully submitted that the judgment below should be affirmed.

May Term 1927.

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