Fabian Tract No. 82.

THE Workmen's Compensation Act

WHAT IT MEANS, AND HOW TO MAKE USE OF IT.

With the Text of the Act and most of the Schedules.

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The Workmen's Compensation Act*

The Workmen's Compensation Act, 1897, is a new law about accidents to workmen. It comes into force on 1st July, 1898, and as it alters the present law of employers' liability to pay for accidents to their workmen, every workman ought to know what it says. If any part of the tract is not clear to any reader, or any point is omitted on which he wants information, he can write to the Secretary of the Fabian Society, 276 Strand, London, W.C., who will send him a full and clear answer free of charge.

To understand the change which the new law will make, it will be well shortly to state the existing law.

The Old Law.

Before the first day of January, 1881, if a workman were injured by an accident when working, he could only bring an action at law against his master—

(i.) where the master employed a servant knowing that the servant was incompetent to do the work; or

(ii.) where a master used bad machinery or plant which he knew was unsafe and dangerous.

But if the master proved (i.) that the workman knew the machinery or plant was unsafe, or (ii.) that the workman was partly to blame for the accident, the workman could not win his action.

The workman could not at this time, therefore, recover compensation for injuries caused by a fellow servant, unless he proved that the employer knew the fellow servant to be incompetent. This is called the Doctrine of Common Employment, and as foremen were generally held to be fellow servants, it was very seldom that a workman could get any compensation for his injuries. This was a flagrant injustice, for which a remedy was badly needed.

In 1880, however, Parliament made a law called the Employers' Liability Act, 1880, which said that an employer is liable to pay damages to a workman if he be injured, or to his relatives if he be killed,

(i.) by some defect in the machinery or plant which ought to have been put right by the master or his foreman;

(ii.) by the carelessness of a foreman;

(iii.) through obeying an order which caused the injury;

(iv.) through a fellow workman obeying a rule or order of his master, and

(v.) by the carelessness of a man in charge of any engine, points, or signal on a railway.

* A longer work on the Act is *The Workmen's Compensation Act: with copious notes*, by W. Addington Willis. Second edn., 1897; Butterworth & Co. 2s. 6d. net.

But the master can escape liability by proving that the workman injured knew the danger of the bad machinery, or was partly to blame for the accident.

It will be seen that the Act of 1880 did not abolish the doctrine of common employment except so far as it applied to foremen. A workman could get no compensation for injuries caused by a fellow servant who was not known to be incompetent by the master. For the great majority of accidents, therefore, there was still no remedy against the employer.

The Act of 1880 only applies to manual laborers, and masters are not liable to pay more than three years' wages to the man injured, or, if he is killed, to his relatives. To decide whether the master is liable an action has to be brought in the County Court, either before the judge alone, or the judge and a jury. This costs money, and as the workman may only obtain a verdict for a small sum, in many cases there is not much, if any, left for the workman after paying the legal expenses. Besides, it is difficult to get workmen to give evidence against their master, and so the cases which can safely be brought into the County Court are very few indeed.

And if a master dies before the case is decided in the County Court, the workman cannot obtain any damages at all.

In many cases, an employer formed a society or scheme, by which the men employed by him had to forego any claim under the Act of 1880, and be content with the compensation which would be paid under the scheme. This is called "contracting out."

Such is the state of the law until 1st July, 1898.

But it must be remembered that the Employers' Liability Act, 1880, is not repealed by the new law. It will, after 1st July, 1898, still be open to a workman or his relatives to bring an action under the law of 1880. But in such cases, although more compensation may sometimes be obtained, the employer can escape liability by proving that the workman was partly to blame for the accident or knew the danger he was incurring. It will be seen later that in accidents under the new law the employer cannot do so.

The New Law.

The chief changes made by the new law are as follows :—

1. If a master dies before an injured workman has obtained compensation, the personal representatives, that is, the executors of the will, or the administrator of the estate, of the master, are liable to pay.

2. The new Act applies to more men and women than the Act of 1880.

3. The doctrine of common employment is abolished in the trades to which the new law applies, and therefore the master is liable in a great many more cases of injury or death than before.

4. " Contracting out " is only allowed under certain conditions.

5. The new law alters the way of compelling payment of compensation.

6. It alters in some ways the amount which must be paid.

Explanation of the Changes made by the New Law.

1. *Deceased Employers.*—About this change, nothing more need be said than that a workman can take proceedings in the manner mentioned later, just as if the master were alive.

2. *Persons Included.*—The new law applies to all workmen or women, whether manual laborers or not, in factories, docks, wharves, mines, quarries, or on railways and buildings. That is to say, it includes clerks, miners, engineers, dock laborers, wharfingers, railway servants, quarrymen, bricklayers, joiners, general laborers, and apprentices.

In fact, it is best to say that the new law applies to all employments except (i.) agricultural laborers, (ii.) seamen and fishermen, (iii.) domestic servants, (iv.) workshop operatives, (v.) shop assistants, (vi.) persons engaged in transport services, (vii.) sailors in the navy and soldiers in the army.

The new law applies to women as well as to men ; but the word "workman" will be used in order to save space.

The Act unfortunately only applies to work on buildings of a certain height. Where a building is being erected, or repaired, or pulled down, a workman who is injured can only get compensation where the building is more than thirty feet high.

In the case of a shipbuilding yard, a workman may get compensation when working on the ship after it has been launched into any dock, river, or tidal water near the yard. And when a ship has been dry-docked for repairs, a workman who is injured whilst working on her can get compensation.

3. *Accidents Included.*—For what accidents is an employer liable? This is the great question to be answered when considering the law of employers' liability. The new law makes a great change.

If an accident happens, and a workman is either killed or *so injured that he is unable to earn full wages for the next two weeks*, his employer must pay compensation to the injured man or those supported by him, provided that the man be working at a trade to which the new law applies.

A workman can obtain compensation even though he was partly to blame for the accident; but the master will not be compelled to pay anything if the workman is entirely to blame and causes the accident by his own bad behaviour. A workman therefore may now obtain compensation where the accident was caused by a fellow-servant. But if the fellow-servant caused the accident by bad behaviour he also cannot obtain compensation, although he was injured at the same time.

If, however, the injury be caused by the negligence of the employer himself, or of a foreman, the workman injured can either claim compensation under the new law, or bring an action either in the County Court under the Employers' Liability Act, 1880, or at common law, *i.e.*, the law as it was before 1881.

The cases in which a workman will, with some degree of certainty, obtain a larger sum under the old than he will get under the

new law, are few. But, if a workman does bring an action at law, and the judge who tries the case decides that the employer is liable under the new, but not under the old, law, he can, if the workman asks him to do so, fix the amount which the employer must pay, and so save further costs.

4. "*Contracting Out*"—Under the Act of 1880, an employer could force a workman engaged by him to contract out of the Act, and to join any scheme or society formed by him. In many cases, the benefits under the scheme were very small, and as the workman had to pay contributions, the employer gained more than the workman.

The new law abolishes "contracting out," except under two conditions—

(i.) The employer must not force a workman engaged by him to join any society formed by him. That is to say, if a workman applies for a job, the master cannot make it a condition of employment that the workman joins the society or scheme.

(ii.) And before any such scheme can exist the employer must submit it to the chief Registrar of Friendly Societies.

If the Registrar, *after consulting the workmen as well as the employer*, thinks the men will get as much benefit from it as from the new law, he may grant a certificate. But until the certificate is granted, no scheme or society formed by an employer is legal. The certificate lasts for five years, but if during that time the workmen find that (i.) they lose by the scheme, or (ii.) they are not fairly treated under it, or (iii.) that it is not fully carried out in practice, they may complain to the Registrar. If after enquiry the Registrar thinks the complaint is justified, he may cancel the certificate unless the scheme is made satisfactory and the subject-matter of the complaint remedied.

5. *How to Make the Employer Pay.* Under the Act of 1880, an action in the County Court is necessary. The difficulty and expense of this has been already mentioned. The new law makes a great alteration.

But first of all, who is "the employer"? The employer may be (i.) a company; (ii.) a firm of partners, or (iii.) a single master. And further, the employer is not of necessity the employer by whom the workman is engaged. The new law says that if an employer undertakes to do a job, and contracts with another employer to do part of that job, it is the employer who has undertaken the whole job who must pay for any accident which happens. But this is only the case where both employers are engaged in the same trade or branch of trade. If they are engaged in different businesses, the employer by whom the workman is engaged must pay compensation for any accident which occurs. For instance, if an employer contracts with a decorator to paint his works, and a painter employed by the decorator is injured by an accident, the employer who owns the works is not liable, but the employer who undertakes the painting of the works.

Notice.—In order to claim compensation for an injury, notice of the accident must be given to the employer. If the workman is killed, the notice must be given by his family.

The notice must be in writing, and give the following information : (i.) name and address of the injured workman ; (ii.) the date of the accident ; (iii.) the cause of the injury.

In giving notice, the following rules must be observed : (i.) it must be given as soon as possible after the accident ; (ii.) and before the injured workman ceases of his own accord to work for the employer ; (iii.) only ordinary language is necessary, and the notice need not be in any special form ; (iv.) the notice must be accurate, and all the information already mentioned given—if not, the workman may not be able to claim and get compensation.

The notice may be sent either (i.) by hand or (ii.) by registered letter, to the place of business of the employer, whether the employer is a company, a firm, or a single master, and if the workman knows where his employers or one of them lives, the notice may be sent to their or his house in the same way. Although no definite time is fixed for giving *notice*, yet *claims* for compensation must be made within six months of the accident, whether it results in death or not. Unless the claim is made within the proper time, no compensation can be obtained.

After notice of the accident has been given there are two points to be considered :

(i.) Is the accident one for which the employer is liable to pay ?
(ii.) What is the amount of compensation to be paid ?

A dispute may arise between the workman and the employer on one or both of these questions. The new law says they must be settled in one of two ways.

First, if any committee of employers and workmen has been formed to settle disputes under the new law, that committee must decide the question. But

(i.) if the committee does not settle the dispute within three months from the day when they are asked to do so, or

(ii.) if the committee thinks it would be best to have the dispute settled by a single person chosen by them, or

(iii.) if either the employer or the injured workmen, *before* the committee meet to settle the dispute, sends a notice in writing to the committee, objecting to the committee deciding the dispute, or

(iv.) unless the employer or workman can agree ;

then in any of these cases, the dispute must be settled by arbitration.

An arbitrator is to be appointed by the master and workman jointly, if they can agree on a suitable person.

If they cannot agree, the County Court judge is to decide the dispute. But the County Court judge may be able to appoint an arbitrator if the Lord Chancellor issues rules authorising him to do so.

The arbitrator can ask the County Court judge to decide any questions of law which arise during an arbitration. But, unless the

master and workman have agreed otherwise, an appeal to a higher Court is allowed from any decision given by him on a point of law.

The arbitrator decides whether the master or workman shall pay the costs of the arbitration. The costs will be fixed by a scale set out in the rules of the County Court.

When the amount to be paid has been fixed either by the County Court judge, or the arbitrator, or the committee, as the case may be, a memorandum must be sent either by the committee or arbitrator, to the Registrar of the County Court of the district in which the workman lives. This memorandum must state the decision arrived at, and will be entered in a special register without any fee. When registered, the memorandum can be enforced like a County Court judgment, that is, by execution against the goods of the person liable to pay the amount mentioned in the memorandum.

6. *How much compensation must the employer pay?*—Under the Act of 1880 an action against the employer in the County Court is necessary before he can be made to pay compensation to an injured workman. And this is so whether the workman was killed or only injured.

Under the law of 1880 the highest amount payable is three years' wages of an average workman engaged in the same trade and district; and the judge or jury may award any smaller sum. Under the new law a different system will be introduced. A lump sum is payable if the workman is killed by an accident whilst working for his employer. But a weekly sum is to be paid to the workman if his injuries prevent him from working or earning full wages *for more than two weeks.*

Compensation for a Death.

How much must be paid if the workman be killed?

The amount of compensation to be paid depends on whether the workman killed leaves (i.) relatives who were *wholly* supported and kept by him; or (ii.) relatives who were *partly* kept by him; or (iii.) *no* relatives kept by him. If the workman leaves a wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, stepson or stepdaughter *whom he entirely supported* by his wages, the employer must pay at least £150, *but it may be more.* It depends on the average weekly earnings of the workman whilst he had worked for his employer.

If he had been employed for three years or more, the amount is fixed by finding out the average wages per week for the three years before the accident. If three years' wages at that average wage per week come to more than £150, the employer must pay a sum equal to them. In other words, the employer must pay 156 times (that is, three years, as there are 52 weeks in the year) the average weekly earnings. But if the workman had not worked for the same employer during the three years before the accident, his average wages per week whilst he had worked for his employer must be found out. When that is done, the amount to be paid is three years' wages at that rate, that is, 156 times his average wages, but

his relatives must never get less than £150 from the employer. If, however, the workman's relatives were not altogether kept by him, the amount cannot be more than £300, but it may be less than £150.

Unless the employer and the relatives agree as to the amount, it must be fixed by the committee or arbitrator as already mentioned; but the amount can be lower than £150, if a smaller sum would be sufficient compensation. The workman may, however, have none of the relatives mentioned living at his death. When this is so, the employer must pay reasonable funeral expenses, but they must not be more than £10.

Compensation for Injury.

If the accident does not kill the workman, but prevents him from working, the compensation is fixed in a different manner.

If the injured workman is unable to work for more than two weeks after the accident, the master must pay him a weekly sum during the time he is away from work. The amount depends on his average wages.

If the workman has been employed by the master for a year or more, the sum to be paid is half the average weekly wages earned by him during that period.

If he has not been employed by the master for twelve months, the amount payable is half the average weekly wages earned by him whilst he has been employed by the employer.

In any case the workman cannot get more than £1 per week. When the injured workman is not entirely prevented from working after the accident, he is still entitled to a weekly sum if he cannot earn full wages because of his injuries. That is to say, the master must pay him half the difference between what the workman can get after the accident and what he earned before. If he earned 30s. before the accident, and for some time afterwards can only get £1 a week, the master must pay him 5s. a week until he is well again.

But it must be remembered that the employer has not to pay anything during the first two weeks after the accident.

The question remains, who is to say whether the workman can or cannot go to work?

The new law says, that after a workman has given notice of an accident, the employer can send a doctor to examine him; and during the time a workman is getting a weekly payment from his master he must, if the employer wishes it, allow a doctor to examine him. Unless he allows the doctor to do so, he can get no compensation. But if the workman is not satisfied with the doctor, or with any report which the doctor makes, he can be examined by another doctor. This doctor must be one specially appointed to report under the new law, and he will be paid by Parliament.

When a weekly payment has been made for six months, the employer may pay a lump sum. If he does so, it will be in full settlement of the weekly payments which would otherwise be payable to the workman.

But at any time while a workman is getting a weekly payment because of the accident preventing him from earning full wages, or from working at all, the workman or employer may want it to be altered. The workman may find that his accident was more serious than he thought, and that he cannot earn as much as he thought to do. The employer may wish to pay less, or to stop the weekly payment altogether, because the workman is better in health and can earn more than was expected. In either case, unless they can agree, the question must be settled by arbitration as already mentioned.

A workman who is being paid a weekly sum for injuries from an accident, cannot legally transfer it to somebody else ; that is to say, the employer cannot pay it to a creditor of the workman. The workman is meant to have the benefit of it, although the workman can pay his debts out of it by paying in instalments.

Other Regulations.

When a workman who is killed by an accident has made a will, the compensation must be paid by the employer to the executor of the will. If there is no will, it will be paid to the administrator of the workman's property.

The relatives to whom compensation is payable under the new law, are entitled to administration in the following order :—(i.) Wife, or husband ; (ii.) child ; (iii.) grandchild ; (iv.) father ; (v.) mother ; (vi.) brothers or sisters, or grandfather or grandmother.

The committee or arbitrator, when they find that an employer must pay compensation, may order the money to be invested in the Post Office Savings Bank. It would then be entered in the name of the Registrar of the County Court within whose district the deceased workman lived.

The money may be invested in the purchase of an annuity from the National Debt Commissioners ; or it may be paid into the Post Office Savings Bank, although the sum is larger than the amount usually allowed in the bank.

When the money is invested in the Post Office Savings Bank, it cannot be paid out unless the County Court judge or the Treasury sign a form authorizing it to be paid out.

Although a person who is entitled to money paid as compensation has an account at the Savings Bank of his or her own savings, another account may be opened in order to pay in the compensation money.

In case the employer becomes bankrupt before payment of the compensation awarded, and has insured himself against the Act, the insurers must pay the amount to the workman or his relatives. The money may not be used by the employer to pay his debts.

This applies also where the employer makes any arrangement with his creditors.

If the employer is a company which is insolvent and being wound up, the rule applies as if the company were a private person.

Regulations as to Time under New and Old Law.

NOTICES.—Under the new law, notice of the accident, whether resulting in death or not, has not to be given within any certain time, but as soon as possible.

Under the Act of 1880, notice of the accident has to be given within six weeks of the injury, but in case of death may be excused altogether if the judge thinks the excuse reasonable.

CLAIMS.—Under the new law, compensation must be claimed within six months from the date of the injury or death.

Under the Act of 1880, an action must be started :

(i.) in case of death, within twelve months from that date ;

(ii.) in case of injury, within six months of the accident.

If an action is brought under neither the new law nor the Act of 1880, it must be started within twelve months from the date of death.

It will be seen that notice is not really necessary under the new law. But compensation cannot be obtained unless it is claimed within six months of the day of the injury or of the death of the workman. To avoid friction, notice should always be sent within six weeks of the accident, whether the workman is killed or not. In fact, if the workman is injured, and prevented from working for two weeks, notice should be sent immediately the two weeks have expired, so as to get a weekly payment as soon as possible.

Alternatives.

As the new law does not repeal the Act of 1880, but expressly states that a workman may still, where possible, bring an action under it in the County Court, it will be useful to consider in what cases such an action is possible.

It must be remembered that it is not every workman injured (or his relatives, if killed) who can bring an action under the Act of 1880. The Act of 1880 applies to manual laborers only, whereas the new law applies to all persons engaged in certain trades, whether as manual laborers or otherwise.

An action under the Employers' Liability Act, 1880, can only be maintained :

(i.) If the workman is engaged in manual labor at an employment to which the Act applies ;

(ii.) if the workman is injured or killed in any of the five ways mentioned in the Act of 1880 (see p. 2).

(iii.) if notice has been given within the time fixed by the Act of 1880.

As the workman or his relatives will be certain in most cases of some compensation under the new Act, actions under the Act of 1880 should be avoided except in cases of very serious injuries to the workman and very clear liability of the employer. The reasons for this are—

(i.) The difficulty of getting workmen to give evidence against their employer is great ;

(ii.) The expenses are considerable, as the costs of the employer may have to be paid by the workman if he loses his case ;

(iii.) The amount of the damages which the judge or jury will award is uncertain ;

(iv.) The employer is not liable if the workman was partly to blame for the accident, or knew of the dangerous state of the machinery or plant. And, of course, an action cannot be brought for injuries caused by a fellow servant.

But as the highest amount of compensation which a workman's relatives can get under the new law is only £300—and this is only where they were entirely kept by the workman killed—it may sometimes be well to claim under the Act of 1880.

It will be remembered that although the case should be lost, yet if the judge finds that the employer is liable to pay compensation under the new law, he may fix the amount to be paid. He can only do so when asked by the workman's relatives, who should, to save further trouble and expense, always do so. The expenses of the employer, or part of them, may have to be paid by the relatives if their case is not successful.

In what cases ought such an action to be started ?

Now, £300, the highest amount of compensation under the new law, means that the workman was earning on the average £2 a week at the time of his death. The highest amount under the Act of 1880, is three years' average wages of a worker in the same trade, grade and district, as the worker killed. Therefore an action under the Act of 1880 should only be started if the workman's wages were at least £2 10s. a week, and even then, as the full amount of three years' wages, viz., £390, may not be obtained, it is only in cases where the employer or his foreman is clearly and seriously to blame, that the expense and uncertainty of such an action should be risked.

Where the workman is injured, he can, under the new law, at most, only get a weekly payment of £1. This is liable to alteration, and if paid for six months, the employer may pay a lump sum instead of continuing the weekly payment. Now £1 a week is only to be paid if the injured workman's wages are at least £2. It may, therefore, be said, that actions under the Act of 1880 for injuries should only be started—

(i.) if the workman's wages were £2 10s. a week ;

(ii.) if the action is almost certain to be successful because of the employer or his foreman being clearly and seriously to blame ; and

(iii.) if the workman's injuries are very serious and likely to continue for life.

These conditions are, of course, arbitrary, but probably a judge and jury would be influenced very much by calculating what a man could get under the new law. But if a counter prejudice caused by the injuries and the circumstances of the accident can be raised in their minds, they may be inclined to penalize the employer.

If (ii.) and (iii.) are not present in the facts, the limit of wages in (i.) should be raised to £3.

General Advice.

The Trade Union secretary and relatives should obtain the names and addresses, at least, of those present at an accident. If those persons would write down a short account of what they recollect of the matter, it would be very valuable in the event of subsequent proceedings, whether under the new Act or otherwise.

Reforms.

So far we have dealt with the way to take advantage of the Act as it stands. The basis upon which further reform should proceed is, that since industry is carried on for the ultimate benefit of the community, therefore the community is bound to see to the welfare of all engaged in industry. This duty has two sides, the prevention of accidents and injury to health by means of labor-protective legislation, and the compensation for accidents and injury when they occur. To the State, therefore, the workman must look for his compensation. The employer can most effectively be dealt with for breach of the protective laws. Here are the chief points on which the present measure needs alteration :—

1. *Extension of the Measure.*—It was admitted by the Government that their Bill was incomplete, but they refused to "overload" it. They pledged themselves to introduce a special Bill for seamen, but it gives no signs of appearing above the political horizon. Seamen, workshop operatives, builders, agricultural laborers, shop assistants, and at least those domestic servants who are engaged in hotels and institutions, should be included. Not the frequency of accidents, but the fact that a worker is injured, should be the test of the applicability of the Act.

Secondly, the employer should be liable not only for accidents, but also for injury to health caused by industrial processes. At present, the wrecks turned out every year from the chemical and white-lead works receive no compensation, while a man who is laid aside for three weeks by a slight accident gets something. This is neither just nor logical.

Thirdly, the present Act does not come into operation until a fortnight after an accident. This limitation should be removed, for a man who is laid up for a week is as much entitled to his proportionate compensation as the man who cannot go to work for a month.*

2. *Mode of Payment.*—At present, the injured party has to recover from the employer, and if a pension is awarded and the employer goes bankrupt, there is no effectual remedy. At least the payment should be made a preference debt in all cases. As in Germany, the workman should look to the State for compensation, and the State should recover from the employer where possible.

* The importance of this may be seen from the fact that of the accidents which occurred at the Oldbury Alkali works during the past 17 years, 60 per cent. of the sufferers would have been excluded from the benefits of the new Act in consequence of the 14 days' clause.—*Birmingham Post*, 14th March, 1898.

Compensation may be made either in a lump sum or in a pension, and the provisions of the Act make it probable that lump sums will generally be given, both to secure the employer against a permanent obligation, and the workman against his employer's bankruptcy. Now, a pension is the most favorable form for the injured party, for it cannot be invested in a small shop and lost. If payment were made by the State in the first place, pensions would be quite safe. Compensation should therefore be confined to the form of pension.

3. "*Act of God*" *Accidents.*—The Conservative Government did an injustice to its protégés, the capitalists, in making them liable for all kinds of accidents. When negligence is proved, or there has been a contravention of the law, liability is proper; but outside these classes accidents are "acts of God." This will be a very serious matter the first time a big colliery explosion occurs. A certain proportion of accidents is a necessary occurrence in industry. The State can reduce them by imposing more stringent regulations on the employers of labor, and thereby proportionately increase their liability for accidents. But the German experience shows that there will be a remainder of accidents whose number will be statistically a certainty. The workman pays his toll of responsibility in suffering, the State as profiting by the industry should bear the financial burden. Otherwise the employer will be certain to shift the incidence of compensation from his own shoulders to those of the consumer. The State should compensate the workman directly, and, in cases of negligence or breach of the law, should recover the amount from the employer.

4. *Notice.*—As notice of all accidents has already to be given by the employer to the factory-inspector, there is no need for any further notice from the workman to the employer, and the provisions requiring it should be struck out as unnecessary.

5. *Arbitration.*—The factory inspector has at present to enquire into all accidents. If the primary responsibility for payment is thrown on the State there is no necessity for the elaborate provisions for arbitration. The State should pay on the report of the inspector, and further investigation could be made if the employer resisted the proceedings taken against him to recover penalties for breach of the Factory or other Acts; there would then be no chance of the injured party being forced to the Court of Appeal on a point of law.

6. *Common Employment: Contributory Negligence.*—With the extension of the principle of compensation to all trades, opportunity should be taken to sweep away these antiquated legal theories which are now abandoned even by lawyers. A bill to abolish this has actually passed its second reading in the House of Commons.

7. "*Contracting Out.*"—The existing compromise on contracting out removes many of the worst features of private compensation schemes, but the eagerness of coalowners to promote schemes under the Act shows that they think such schemes less onerous to them than the schedules of the Act. There is no reason why a workman

should contribute at all towards his own compensation, and contracting out should be abolished altogether.

8. *Scale of Compensation.*—The present niggardly scale should be revised in favor of pensions, which should be based on a real living wage. Permanently incapacitated workmen should not be treated as out-door paupers.

TEXT OF THE
WORKMEN'S COMPENSATION ACT, 1897.

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that :—

(*a.*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed ;

(*b.*) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act ; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid ;

(*c.*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed ; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this subsection, when the Court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favorable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favorable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reason exists for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

4.—Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

5.—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

6.—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer, for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

7.—(1.) This Act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896:

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power:

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies:

"Quarry" means a quarry under the Quarries Act, 1894:

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:

"Dependants" means—

(*a.*) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

(*b.*) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

9.—Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10.—(1.) This Act shall come into operation on the first day of July, One thousand eight hundred and ninety-eight.

(2) This Act may be cited as the Workmen's Compensation Act, 1897.

EXTRACTS FROM SCHEDULES.

FIRST SCHEDULE.

Scale and Conditions of Compensation.

(1.) The amount of compensation under this Act shall be—

(*a.*) where death results from the injury—

(i.) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii.) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii.) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(*b.*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the Registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar . . .

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name . . .

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therfor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

SECOND SCHEDULE.

Arbitration.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration :—

(1.) If any committee, representative of an employer and his workmen exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so authorises, according to the like procedure, by a single arbitrator appointed by such county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament . . . . .

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. . . . .

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

[The omitted parts of the Schedules deal with matters which in the main only concern lawyers.]

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