

Fabian Tract No. 82.

THE
Workmen's Compensation Act

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

WITH THE TEXT OF THE PRINCIPAL ACT, THE EXTENSION ACT
OF 1900, AND MOST OF THE SCHEDULES.

NEW EDITION, CONTAINING THE LATEST LEGAL INTERPRETATIONS.

[ONE HUNDRED AND FIFTY-SEVENTH THOUSAND.]

PUBLISHED AND SOLD BY

THE FABIAN SOCIETY.

PRICE ONE PENNY.

LONDON :

THE FABIAN SOCIETY, 3 CLEMENT'S INN, STRAND, W.C.

JUNE, 1901.



THE WORKMEN'S COMPENSATION ACTS,

1897 AND 1900.

THE WORKMEN'S COMPENSATION ACT, 1897, is now the most important law about accidents to workmen. This Tract is written to explain it; if any part 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, 3, Clement's Inn, Strand, London, W.C., who will send him a full and clear answer free of charge.

The Old "Common" Law.

We must first explain two other older laws, still in force, by which an injured workman can sometimes recover damages.

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.

Employers' Liability Act, 1880.

In 1880, therefore, Parliament passed the Employers' Liability Act, 1880, which makes an employer 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, or
- (v) by the carelessness of a man in charge of any engine, points, or signal on a railway.

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

“six in a room” was changed to consult a doctor, who attributed her death to the crowded conditions as comfortable enough.

It must be remembered that the Employers' Liability Act, 1880, is not repealed, and it is still open to a workman or his relatives to bring an action under it.

The Workmen's Compensation Act, 1897.

Trades Included.—The Act applies to all men or women, whether manual laborers or not, who are employed in certain places. Clerks and apprentices are included. The word "workman" will be used in this Tract, in order to save space, to mean also workwoman and workgirl. The following is a list of the places to which the Act applies :—

- (1) A railway, including a light railway.
- (2) A factory, which includes the following places :—

Print works, bleaching and dyeing works, earthenware or china works, lucifer match works, percussion cap works, cartridge works, paper staining works, fustian cutting works, blast furnaces, copper mills, iron mills, iron, copper and brass foundries where more than five persons work, metal and indiarubber works, paper mills, glass works, tobacco factories, printing works, bookbinding works, flax scutch mills.

Also hat works, rope works, bakehouses, lace warehouses, ship-building yards, quarries, and pit banks, if steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

Any premises wherein steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manufacturing, or finishing cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoanut fibre, or other like material, or any fabric made thereof.

Any premises wherein steam, water, or other mechanical power is used in aid of the manufacturing process carried on there, for the making, altering, repairing, ornamenting, finishing, or adapting for sale of any article.

Every laundry worked by steam, water, or other mechanical power.

The following places are also made "factories" by the Act :

- (i) All docks, wharves, quays and warehouses ;
- (ii) All machinery used in the process of loading or unloading to or from a dock, wharf, quay or warehouse.

A workman killed or injured at or close to any of these places or *machines* is to be considered as having been killed or injured at or close to a factory.

A workman working on a ship inside a dock (whether a wet or a dry dock) is not considered as working on or in or about the dock. The same is true of a quay or warehouse.

If, however, the ship is being loaded or unloaded by machinery on the side of the dock he is considered as working *about* that machinery, although at the time he is on board the ship.

It is not yet clear whether, if a ship is being loaded or unloaded by *its own* machinery, that machinery is within the Act.

- (3) A mine, which includes coal mines and every other mine used for working minerals.

(4) A quarry, which includes every place (not a mine) in which persons work in getting slate, stone, coprolites, or other minerals, provided it is more than twenty feet deep.

(5) Engineering work, which means any work of construction, alteration, or repair of a railroad, harbor, 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.

(6) As regards work on buildings, the Act applies only to three classes :

(i) Any building over thirty feet high, which is either (a) being constructed or repaired by means of a scaffolding ; or (b) being demolished, even when scaffolding is not used. The building must be actually at least 30 feet high at the time of the accident, the height being measured from the original level of the ground, to the top of the roof.

The accident need not be caused by the scaffolding. All that is necessary is a building 30 feet high, which is being constructed or repaired by means of scaffolding. Painting such a building is within the Act. And though the brick-work may be finished and the building in actual use, yet it is being "constructed" until the scaffolding is removed. The scaffolding need not be 30 feet high, and may be outside or inside the house. Loose boards placed upon moveable trestles are "scaffolding." So (probably) are loose planks laid across two walls or lashed to iron pillars.

(ii) Any building on which machinery driven by steam, water or other mechanical power is being used for the purpose of the construction, repair, or demolition of that building ; and

(iii) Any premises on which machinery worked by steam, water, or other mechanical power is temporarily used for the purpose of the construction of a building, or any structural work in connection with a building.

(7) By the **Act of 1900**, persons mainly employed in agriculture by an employer who habitually employs one or more men are included in the Act of 1897 after 30th June, 1901, and accidents to them in the course of their employment, wherever they happen, come under the Act. Agriculture includes care of gardens and woods, and the tending of live stock.

As a general rule, the following important trades do not come under the Acts : (i) seamen and fishermen ; (ii) domestic servants ; (iii) workshop operatives ; (iv) shop assistants ; (v) persons engaged in transport services, and in tending horses ; (vi) sailors in the navy and soldiers in the army.

Accidents Included.—When a workman is injured or killed by an accident whilst at work, his employer must pay compensation if the workman is prevented from earning full wages for more than two weeks, or, if he is killed, to those whom he either entirely or partially supported. The accident must happen on, or close to, the employer's place of business. Compensation is to be paid although the accident is caused by the workman himself or by his fellow workmen. Every accident, however caused, provided its effects last more than a fortnight, comes under the Acts, excepting

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only when caused by the workman's own "serious and wilful misconduct."

It must be remembered that a workman can still, if injured by the negligence of the employer himself, or of a foreman, bring an action under the Employers' Liability Act, or under the Common Law.

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 he does bring an action, either under the Act of 1880, or at Common Law, and the judge who decides the case decides that the employer is only liable under the Compensation Act, the workman must ask the judge to fix the amount which the employer must pay, and so save further costs.

The following rules determine whether compensation can be claimed :—

(i) It is not to be paid to a workman who causes the accident by his "serious and wilful misconduct." But though the workman who causes such an accident cannot himself get compensation, his fellow-servants who are injured at the same time can get it.

(ii) It is only payable for those accidents which either kill a workman or *so injure him that he is unable to earn full wages for more than two weeks.*

(iii) It is only to be paid for accidents which happen at or close to the employer's place of business. There is no difficulty in saying whether the accident occurred "on or in" a certain place. But the Act also uses the word "about." The intention of Parliament seems to have been that compensation should only be paid for accidents which either occur on or in the employer's place of business, or so near to it as to be practically the same thing.

Thus, a carter employed at timber works to which the Act applied, whilst loading his employer's cart was killed by a piece of timber tilting and knocking him off the cart. The cart was, at the time of the accident, standing in the street near to the entrance of the works. The Court of Appeal therefore said that the carter's widow was entitled to compensation. But if a carter employed, for example, by a railway company, is injured by an accident which happens when he is on his rounds, collecting goods to be taken to the station, compensation cannot be obtained.

This rule does not apply to agricultural labor.

(iv) *Compensation is only to be paid for an accident which happens when the workman was doing his proper work.*

For example, a railway ticket collector, *after* taking the tickets, got on to the foot-board whilst a train was in motion, in order to speak to a young woman of his acquaintance. He slipped and was killed. The Court of Appeal said his relatives were not entitled to compensation, because he was not doing his work at the time of the accident. He had finished taking the tickets, which it was his duty to take, and got on to the train for his own pleasure.

Another case, showing what is meant by an "accident arising out of and in the course of his employment," can be given. A boy was employed in pottery works to make balls of clay and hand them to a woman who worked at a moulding machine. He also had to take the moulded pottery away. But he was not employed to do anything to the machine, and was, in fact, forbidden to touch it, it being the foreman's duty to clean it. Whilst the woman had gone to fetch some clay, the boy tried to clean the machine and was injured. The Court of Appeal said he was not entitled to compensation, because the injury was caused not by an accident which arose in the course of his employment, but whilst he was doing something which he was not engaged, and actually forbidden, to do.

But in the case of accidents which injure a workman whilst he is assisting in an emergency by doing something outside his ordinary work (as stopping a runaway horse), compensation will be obtained.

“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. “Contracting out” of the Compensation Act is forbidden 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 complaint remedied.

How to get Compensation.—The employer has to pay it; but who is “the employer”? He is not of necessity the employer by whom the workman is engaged. If an employer undertakes to do a job, and contracts with another employer to do part of that job, the employer who has undertaken the whole job 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 the rule in agriculture, see the Act, page 14.]

For example, if a railway company employ a contractor to reconstruct one of their stations, and one of the men whilst working for the contractor is killed, the contractor alone would be liable, and not the railway company; because it is not the business of a railway company to erect stations. But if the contractor sub-lets part of the work to another contractor, one of whose men is injured by an accident, the principal contractor would be liable, and proceedings would be taken against him alone by the workman.

Notice of Accident.—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

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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.

The following is an example of notice of accident:—

WORKMEN'S COMPENSATION, 1897.

To [name and address of employer].

Take notice that [name and address of person injured] was on the day of 190 , injured by an accident when working for you. The injury was caused by [shortly state the cause].

Dated [the day on which the notice is sent].

Signed [either by the man himself or by someone on his behalf].

Claim for Compensation.—Besides giving notice of an accident as soon as possible after it has occurred, another step has to be taken in order to get compensation. A Claim for Compensation must be made within six months from the time of the accident. It is not sufficient that an employer pays a weekly sum equal to half-wages after the first fortnight. Conclusive evidence must be obtained that the employer admits he is liable to pay compensation. The only satisfactory way is to get a written agreement from the employer to that effect, stating the weekly sum the man is entitled to. A memorandum of this agreement must be sent to the Registrar of the County Court of the district where the person entitled to compensation lives. (A form is given in the Rules issued to regulate proceedings under the Act.) Then the workman's title to compensation is complete, and can be enforced by the officials of the Court.

The above advice as to getting an agreement from the employer and registering it must always be followed when the injuries are serious and likely to last a long time. Where, however, the injuries are not very severe, and complete recovery can be reasonably expected within six months, it may not be worth while to obtain an agreement. But *the claim for compensation must always be sent to the employer immediately after the injured man has been away from work entirely, or unable to earn full wages, for a fortnight, and when it is certain that he cannot be quite recovered for some weeks.* For then, whatever happens, he will always be able to apply in the County Court for compensation if there is any dispute.

It may be useful to give a form of a claim, though no particular form is necessary:

WORKMEN'S COMPENSATION ACT.

To [name of employer].

Take notice that [name and address of person injured] claims compensation for injuries received while working for you, owing to an accident which took place on the day of , 190 , and of which you have already had notice.

The claim is for per week from a fortnight after the accident until he is recovered,

Dated [the day on which this notice is sent].

Signed [by the workman or someone on his behalf].

After notice has been given, a dispute may arise as to whether the accident is one for which the employer must pay, or whether the trade in which it happened is within the Act, or as to the amount of compensation. The question is to be settled in one of two ways.

First, if any committee has been formed by the employer and his workmen to settle disputes under the new law, that committee must decide the question. But if—

(i) The committee does not settle the dispute within three months from the day when the claim was made upon the employer, or

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

(iii) Either the employer or workman, before the committee meet to settle the dispute, sends a written notice objecting to the committee deciding the question, then, in any of these cases, the dispute must be settled by arbitration in the following way:—

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

If they cannot agree, the question is to be settled either by the County Court judge, or by an arbitrator appointed by him.

An arbitrator, whether appointed by the parties themselves or by the judge, can submit any questions of law which arise to the judge. An appeal from the judge's decision on questions of law can be made to the Court of Appeal direct, unless the employer and workman have agreed to abide by the County Court judge's decision. But on questions of fact, no appeal can be made.

The judge or arbitrator can order either party to pay the costs, which are fixed by the County Court rules.

In deciding disputes under the Act, if the leave of the judge or arbitrator be obtained, a workman may be represented by a member of his family, or "by an officer or member of any society or other body of persons, of which the workman is a member, or with which he is connected." Thus, an officer of his Trade Union can appear for him. But he is not entitled to any fee except travelling expenses. A member of the workman's family, however, may get an allowance for loss of time, the amount being fixed by the judge or arbitrator.

How Much Compensation Must be Paid?

I.—COMPENSATION FOR DEATH.

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.

(i) 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 is not liable to pay more than £300. The exact sum to be paid depends on the average weekly earnings of the workman whilst he had worked for his employer.

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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 during his last period of continuous employment 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.

(ii) If the relatives were only partly supported by the workman killed, the highest amount is also £300. But less than £150 may be awarded if the judge, or arbitrator, or committee think a smaller sum will be sufficient compensation.

(iii) If the workman leaves none of the relatives mentioned living at his death, the employer must pay reasonable funeral expenses, but they must not be more than £10.

Any dispute as to who is a dependent, or as to the amount to be paid to each dependent, is to be settled by arbitration.

II.—COMPENSATION FOR INJURY.

When the accident does not kill the workman, compensation can only be got if the workman is unable to work for more than two weeks afterwards. At the end of these two weeks he may be entirely unable to work, or he may, though unable to earn full wages, be able to do some work. In either case he is entitled to be paid a weekly sum by the employer until he has completely recovered. The amount depends on his average weekly wages before the accident. (i) When a man is entirely unable to work, if he has been employed by the master for a year, 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. Thus, if a workman has earned £1 a week for forty weeks, and £1 10s. a week for the last twelve weeks before an accident, his earnings for the year would be £58. If, therefore, he is unable to work, he would, after the first two weeks, be entitled to a weekly payment of 11s. 2d., that being half of his average weekly earnings, which were 22s. 4d. But in no case can the workman get more than £1 per week.

It has now been decided that a casual laborer, or a man who has worked for less than a fortnight, is within the Act, but it is not yet clear how in such a case the average weekly wage is to be calculated.

(ii) 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. This sum cannot be more than half his weekly wages before the accident, or more than the difference between his new and his old wages.

But it must be remembered that the employer has not to pay anything for the first two weeks after the accident, and that a lump sum cannot in any case be claimed by the workman.

In fixing the weekly payment, any payment, not being wages, made by the employer whilst the workman is unable to work, must be taken into account.

The case where a man, though not entirely disabled from working after an accident, yet is unable to earn the same wages as before, require some consideration. They are chiefly cases of small but permanent injuries, as, for example, the loss of a finger or an eye. Such injuries, comparatively simple from a medical point of view, render the workman less efficient—often to a very serious extent. In fact, a return to the same sort of work is sometimes impossible, and thus a skilled man may have to go back to less skilled work, and, consequently, earn less wages. In such cases, therefore, compensation must be obtained at once. It is not enough that the employer continues to employ the man at the same wages as before, though really unable to do the same work. For, in such a case, if no claim is made within the six months, the workman could be dismissed at any time, and on seeking employment elsewhere, would earn less wages, and yet be unable to obtain compensation. In many cases, so long as the employer were alive, the man would be safe enough. But if the employer died, the workman would be without any security against the successors in the business. The proper course to take is to obtain a declaration that the employer is liable, and register it in the County Court. Then, even though the man is kept on at the same wages, he is in a position, when dismissed or on leaving his employment, to apply in the County Court to have the amount of compensation fixed.

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

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 the doctor makes, he can be examined by another doctor. This doctor must be one specially appointed to report under the new law; he can charge the workman a reasonable fee, which the arbitrator *may* order the master to repay.

When a weekly payment has been made for six months, the employer may pay a lump sum in full settlement of future weekly payments. The amount of the sum must be fixed by the Court, or the arbitrator, unless it is settled by agreement.

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

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than he thought, and that he cannot earn as much as he thought he could. 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 the Court or by arbitration. The workman in such a case should see that his payment is not stopped altogether. If he is still suffering in the least degree from the effects of the accident, he is entitled to an order for at any rate 1d. a week. This keeps his right alive; and later, if necessary, he can get the 1d. a week increased.

The weekly payment awarded to an injured workman, or a lump sum paid instead of a weekly payment (after six months) cannot be taken for debts.

Memorandum of the Amount of Compensation Obtained.

When an accident has happened, and the amount of compensation has been fixed, either by agreement, or the committee, or the County Court judge, or the arbitrator, a memorandum must be sent to the Registrar of the County Court for the district in which the person getting compensation lives. It must contain the decision or agreement 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. It must be signed by the arbitrator, or by the chairman and secretary of the committee, or by both parties, according as the case was decided. If not thus registered it cannot be so easily enforced.

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 already an account at the Savings Bank, another account may be opened in order to pay in the compensation money.

If an employer dies before a workman has obtained compensation, his executors or administrators must pay it out of his estate.

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.

This applies also where the employer makes any arrangement with his creditors, and to a company which is being wound up.

•Which Act to Choose.

The Employers' Liability Act applies to manual laborers only, whereas the Compensation Act 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 proper time.

As the workman or his relatives will be certain in most cases of some compensation under the Act of 1897, actions under the Act of 1880 should be avoided except in cases of very serious injuries, 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 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 Compensation Act 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 Act of 1897, he may fix the amount to be paid. He can only do so when asked by the injured person or his relatives, who should, to save further trouble and expense, always ask for it. 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 Act of 1897, means that the workman was earning on the average £2 a

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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 when 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 Compensation Act, only get at most a weekly amount of £1. This is liable to alteration, and after 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 some considerable period or 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 members of a workman's family may now appear at an arbitration under the Act, as has been mentioned on p. 8. They should, therefore, 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 Compensation Act or otherwise.

In cases of permanent injury, such as the loss of an eye, or a hand or leg, where compensation will be required for life, it will generally be wise to employ a solicitor.

TEXT OF THE WORKMEN'S COMPENSATION ACT, 1900.

(Which extends the principal Act to Agricultural Laborers.)

1.—(1) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workman employed in that work as if that employer were an undertaker within the meaning of that Act.

Provided that, where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

(3) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workmen in such other work.

The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

2.—This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

3.—This Act shall come into operation on the first day of July One Thousand Nine Hundred and One.

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 sub-section, 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.

"six in a room" was changed to consult a doctor, who attributed her death to the fact that she was crowded so comfortable enough.

(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, 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 any damage 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 any way 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:

"six in a room" was changed to consult a doctor, who attributed her sickness to no comfortable enough.

"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, harbor, 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 labor 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 representatives 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 or 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 practitioner provided and paid by the employer, and if he refuses to submit himself to such an 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 . . .

was arranged to consult a doctor, who attributed her
to a room, which was not comfortable enough.
six in a room

(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 therefor 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 fees 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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