STATE CONTROL OF INSURANCE

A criticism of the Report of the Committee appointed to enquire into the subject of Workmens' Compensation in Britain with special reference to conditions on this continent.

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(Continued from last issue)

The rise and fall of the Star Chamber, always interesting from the point of view of those who are students of Analytical or of Comparative Jurisprudence and to a larger extent to those who are concerned with the development of individual freedom or with the advancement of democracy, should now commend itself to the advocates of State Insurance as a subject of more than pure historical interest.

The early beginnings of the Star Chamber are obscure. The purposes of its foundation are laudable. It was to adjudicate in cases where the ordinary Law Courts were more or less unsuitable or impotent. The use of such a tribunal was apparent in the troubled days of the middle ages; its misuse was no doubt little feared. It was composed of a committee of the most competent men to deal with the sort of business that came before it, but its great weakness lay in the fact that it was never a court of record. It was not subject to regular rules of pleading, of evidence or of precedent. It was a despot, and like any other despot was the makings of a power of good or a power of evil according to the will that directed it. The opportunities which it gave for overcoming political enemies and buying over others became apparent only when it fell into the hands of men willing to use it for such purposes.

But the Star Chamber although possibly the most prominent was not the only institution of the kind which developed during the middle ages. The Council of the North, the council of Wales and the Marches and the Court of the High Commissioners were all entrusted with particular phases of administration and conducted themselves in the form of independent tribunals. The Court of Petty Requests followed the same lines in a smaller way.

The reaction came during the reign of Charles I. The great upheaval of that period is a landmark in English history never to be forgotten by those to whose lot it falls to plan out the future course of law and order.

Years of hard-earned experience had demonstrated that such tribunals or administration independent of the Law Courts became the powerful machines of autocracy against individual liberty. The "Long Parliament" in the year 1641 abolished the Chamber, the High Commission, the Council of Wales, the Court of Petty Requests and all similar institutions by the famous Act 16 Car. I. c.ii.

Another landmark in the history of British Constitutional rights was reached a few years later when on 13th February, 1639 the Act confirming the Rights and Liberties of the Subject (commonly known in History as the Bill of Rights) was introduced. This Act started out by reciting amongst other things that the commission for erecting the late Court of Commissioners or courts of a like nature are illegal and pernicious, and again that it is the right of the subject to petition the King (the King being by tradition the "fountain of justice," and the figurative head of the Law Courts hearing all petitions through his judges, independently of wealth, colour, politics or creed) and all committments and prosecutions for such petitioning are illegal.

Thus, three centuries ago the British people had asserted their Constitutional Rights or individual liberty to the point of tearing to the ground all independent tribunals and had handed down to future generations in the shape of the Bill of Rights a prohibition to re-establish such institutions.

Since that time no serious effort has been made in any British territory to over-ride the Law Courts or in other words to prohibit the individual from appealing for justice to the Sovereign power, (in the highest court of the land if it be his choice) until Workmens' Compensation tribunals were introduced in certain parts of the overseas Dominions following the lead of some of the States of America.

It is understood by the working man that in suffering his Common Law right to go he is losing the only thing that the common people got in Magna Charta, the only thing that is left to any man to-day when justice fails him.

This right of access to the Law Courts has been the pillar of individual liberty and the safety valve of democracy right down to the present day.

To tie down the safety valve is effective no doubt in cases of emergency as the Mississippi Steamboat Skipper found when racing up-stream with a rival but always dangerous because, as the fire-man told the inquiring passenger, nothing else then happens till the boiler bursts.

Apart from the question of propriety is it constitutional to legislate his right of access to the law courts away from the working man even if he acquiesce for the time being?

If it is contrary to Magna Charta, and the Court of Appeals were established in virtue of that great Charter to give all men justice, and if it is contrary to the spirit of the Act of 1641, which abolished the Star Chamber and all independent tribunals and placed the law courts again in supreme control, and if it is contrary to the Bill of Rights, it is surely unconstitutional in Britain.

However, the British Committee unlike the