THE INSURANCE CHRONICLE

WORKMEN'S COMPENSATION IN CANADA.

Application of the Act—Causes of Accidents and Responsibility of Employers.

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Below is printed the first instalment of an instructive article on the Application of the Workmen's Compensation Act. It has been written for the Monetary Times, by Mr. I. D. Clawson, of the Claim Division of the Maryland Causualty Company.

I.

The laws of a country should keep pace with its commercial development, and if existing laws do not afford a remedy for present conditions, there should be legislation to supply a remedy.

In these days of corporations employing thousands of men, and making use of complicated machinery, it is difficult to apply with justness the rules regulating compensation promulgated in the days of individual hand labor, when the only machinery was the workman's own tools, and when the danger of injury from the negligence of a fellow workman was small. The increase in commercial development accompanied, as it has been, by an increase in the value of lands, has compelled the employer to utilize the smallest amount of space possible for his factories and workshops, and has resulted in crowding them with machinery and employees engaged in its operation, thus greatly increasing the hazard of the workman's employment.

Definition of the Common Law.

For some time it has been recognized that the Common Law does not provide an adequate remedy for compensation to workmen injured in the course of their employment. By Common Law we mean the rules that originated in the common wisdom and experience of mankind, and which have been handed down in the form of judicial decisions. The term "Common Law" is used in distinction to statutory law or rules established by legislative enactments.

It is a well known principle of the Common Law that a man was responsible only for the results of his own acts. The application of this principle, to the relation of master and servant, or employer and employee, created what is known as the doctrine of fellow servant negligence, i.e., that an employer was not responsible for injuries to his employees, caused by the the negligence of a fellow servant of the injured. Under the conditions existing at the time this rule was established, the master and his employees often working together, it was just, but under present circumstances when the employer is often an incorporated company, and the power of the master is delegated to employees acting in the capacity of foreman, manager or superintendent, the strict application of this rule would manifestly work a hardship upon the employee.

Employers and Protection of Employee.

Realizing that under such circumstances the employer should be compelled to exercise a high degree of care for the protection of his employees, most of the English provinces, and a majority of the States of the United States, have passed Employer's Liability and Factory Acts, making the employer responsible for injuries to employees resulting from the negligence of any person standing in the place of the employer, as the superintendent or foreman, to whose orders the workman is obliged to conform, for any injury resulting from acts performed in obedience to his instructions or in compliance with rules or by-laws established by him or by any person to whom the authority of the employer has been delegated, also for any defect in the works, machinery, plant or premises in or about which the employees may be working.

Apart from accidents resulting from the negligence of the employer or his authorized agent, present conditions necessitating the erection of steel frame sky scrapers, and the use of complicated and dangerous machinery in crowded factories, mines, etc., are the cause of numerous accidents, which while not due to the neglect of the injured are not the result of negligence upon the part of the employer, and for which he can in no way be held responsible under the Common Law or Employer's Liabilty Acts.

Result of Hazardous Employment.

A large proportion of accidents are not caused by negligence or want of care; they are the inevitable result of the hazardous nature of the employment. Accidents occurring in this way leave the injured, or, in the event of death, his dependants without any legal redress, and if by reason of such injuries they are deprived of earning a livelihood, they become a burden upon the community and must be supported as public charges, with the result that the entire community of taxpayers must bear a portion of the burden resulting from the accident. As the increase in wages had not kept pace with the increase in the hazard of employment, the employer received the benefit of his employees services, without assuming his proportion of the burden, resulting from this increased hazard of employment. Legislation to remove the burden of the result of fortutious accidents from the workman, and the taxpayer, and make it a charge upon the industry or business of the employer, has been enacted under the title of the Workmen's Compensation Act.

Difference Between Two Acts.

The distinction between an Employer's Liability Act and a Workmen's Compensation Act is that the term "Workmen's Compensation Act" is generally used to designate that class of legislation that provides for compensation upon some definite scale to workmen injured in the course of their employment by fortutious accident. It is intended to compensate him for accidents occurring without fault upon the part of the employer resulting from the natural hazards of his occupation. While the term "Employer's Liability Act" is more generally used to denote that class of legislation that makes the employer responsible only for some direct act or omission upon his part or upon the part of someone for whose actions under the terms of the Act he is legally responsible, done or omitted in violation of the provisions of the Act.

The correct understanding of the distinction between these two classes of legislation is rendered somewhat difficult because laws embodying some of the principles of both classes of legislation have been enacted under one titling. This is the case in Ontario, where the so called Workmen's Compensation Act is in reality more in the nature of an Employer's Liability Act. Of course, as the Workman's Compensation Act is intended to supply a remedy for conditions not covered by the Common Law or Employer's Liability Act, these rules of responsibility or conditions of compensation may and do in many places exist concurrently.

(To be continued.)

The death of Mr. Frank Fletcher, a Vancouver carpenter, who died from the effects of a fall through the chimney hole of a floor to the basement below in a house, in the course of erection has emphasized the necessity for protecting workmen, and the coroner's jury have recommended that civic legislation be secured which will ensure that all such openings in buildings under construction shall be covered.