

REPORT OF THE COMMISSION APPOINTED IN NEW BRUNSWICK TO INVESTIGATE WORKMEN'S COMPENSATION.

The Commission appointed in New Brunswick, January 3, 1917, to investigate the subject of Workmen's Compensation in the Province, has submitted its report to the Legislature.

The text of the final report submitted under date March 14th, is as follows:—

We have the honour to present to you the conclusions at which we have arrived with regard to the operation of the workmen's compensation law in this province.

The order-in-council of January 3, 1917, authorized us to consider the operation of the Ontario and Nova Scotia acts, in their respective areas, in regard to their applicability to this province. This was enlarged by the legislative assembly at its last session, and further power given to us under chapter 35 of the acts of this province, passed in the present year of His Majesty's reign. The consideration of these acts necessarily led to a greater or less degree, to the consideration of other acts in Europe, Australia, New Zealand, the United States and South America.

Before proceeding to discuss these, it may be well to explain fully, in express terms, the common law liability, as between the employer and the employee. Under the common law the employer is liable to the employee for certain injuries sustained by him in the course of, or arising out of the employment. This principle of the common law was enforced against the employer, but subject to three defences, which may be stated as follows:—

First: Negligence on the part of the employee.

Second: The doctrine of common employment, which shortly stated means that if one employee is injured by the act of a fellow employee, an action would not lie against the employer.

Third: What is called the doctrine of the assumption of risk, wherein the employee was assumed to know the hazard upon which he entered, and therefore by accepting money for his services he contracted himself out of the liability by the employer. That, we think, is the common law doctrine.

This, however, was modified by the passing in England of Lord Campbell's act, which was re-enacted in this province and which may now be found in the Consolidated Statutes, chapter 79. The effect of this act was to vest in the heirs of the injured person the right of action against the employer. At common law the right of action died with the death of the injured man, this statute gave the right to the injured man's heirs to proceed against the employer. There is, therefore, the common law right to consider, which we may discuss in this way; the liability of the employer to the employee, subject to the defenses which we have suggested above, and enlarged by Lord Campbell's Act.

In the year 1884, legislation was implemented in Germany by which the common law doctrine of that country was varied, and the Workmen's

Compensation Act was passed. This was followed by Norway in 1887, and successively by nearly all the European nations as time went on.

In point of fact there are forty-six nations or peoples in Europe and portions of the British Empire, as well as in South America, which have accepted the principle of workmen's compensation. Turkey is perhaps the one European nation which has not yet passed legislation of this kind. In America and Canada during the last seven years about forty acts have been passed which adopt the principle.

Let us consider this principle. It means that there shall be fastened upon the industry in which the workman is engaged the hazard of that industry. Or putting it still more broadly, the right of the workman to be compensated, and the liability of the employer to pass assessments of some sort in order to meet his liability. So that the modern doctrine would seem to run in this wise, that the industry which has caused loss to the individual, whether it be that of life or otherwise, should pay the loss. Or practically that the statutory law should restore to the individual the loss occasioned by the industry itself, and this proposition we venture to suggest for Your Honour's careful consideration.

It is admitted, and we believe it will probably be found to be true generally, that modern workmen's compensation costs more than the old plan of employer's liability, but on the other hand it confers larger benefits upon the employee, while it relieves the employer of a heavy personal liability. The material question to consider is the expense of doing business by way of a Government Commission. It has been found, broadly speaking, that the Commissions have transacted the business at much less cost than the insurance companies, and in this connection it is necessary to say that we believe the Government of the province should pay part of the expense of the Commission, probably all of its administrative expenses.

In the Province of Ontario, where of course the income of the Commission is large, the cost has only run to about 4½ or 5 per cent. of the assessment, whereas the ratio of expense of insurance companies is probably not less than 35 per cent. It is therefore clear that of the total amount collected by a Commission, a much larger amount is returned to the employee than is returned by the systems at present in force. One reason, and probably it is a sufficiently sound one, why the province should contribute to the expense, is that in some cases those who are left behind by the injured workman become a charge upon the public, and the assessment which is made under the workmen's compensation plan upon all industries does away with the possibility of these public charities, and the contribution should, therefore, be made partly by the public. This is true in all the provinces of Canada where the Commissions are in force, but on account of the short time they have existed in British Columbia, Manitoba and Nova Scotia, it is not feasible to give exact details of cost.

The Nova Scotia Act runs in this wise: Fifty-five per cent. of the injured workman's wages is paid when he is incapacitated, and less