

EMPLOYERS' DEFENCES REMOVED

With the workmen's remedies went the employers' defences of contributory negligence, assumption of risk and negligence of fellow servants, and the new act contemplates industry paying for all accidents except those "attributable solely to the serious and wilful misconduct of the workman," but payment is provided for in those cases if the accident results in serious injury or death. In addition, the **industrial diseases**—anthrax, lead poisoning, mercury poisoning, phosphorous poisoning, arsenic poisoning and ankylostomiasis or diseases common to mining—are provided for.

ONUS OF PROOF ON EMPLOYER

It lies upon the employer to prove that the injury was due solely to the serious and wilful misconduct of the workman. He must, therefore, show serious and wilful misconduct, and that the accident was due solely to these causes to prevent the workman from receiving compensation. The English Act contains the same provision, except that Sir William Meredith inserted the word "solely" in the Ontario Act, copied into the British Columbia Act, for, as Sir William put it, **the further protection of the workmen.**

Many interesting decisions have been handed down by the courts of Great Britain on the interpretations to be placed on this clause, and in many cases the final decision has rested with the House of Lords. In the first place, the misconduct must be serious, and this means not merely that the consequences are serious, but that the misconduct itself is serious. Secondly, the misconduct must be wilful, and Lord Justice Bramwell says: "Wilful misconduct means misconduct to which the will is a party, something opposed to accident or negligence." Lord Loreburn says the word "wilful . . . imports that the misconduct was deliberate, **not merely a thoughtless act on the spur of the moment.**" Having established the serious and wilful misconduct of the workman, the employer must then show that the injury was attributable solely to it—that the accident would not have happened without it, and was the result of it.

PRESUMPTION WITH THE WORKMEN

"Where the accident arose out of the employment, unless the contrary is shown, it shall be presumed that it occurred in the course of the employment, and where the accident occurred in the course of the employment, unless the contrary is shown, it shall be presumed that it arose out of the employment."