WORKMEN'S COMPENSATION IN CANADA.

What is Its Effect? As to Line of Demarcation Between Liability Under Different Rules of Law.

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A feature common to all of the Workmen's Compensation Acts is a provision for an allowance of half weekly wages during the period of disability resulting from an accident. In no Province except Alberta may the total paid out in this way exceed the maximum amount payable in the event of death. Some difficulty arises in the application of this provision in determining to what extent a claimant must be disabled to entitle him to the benefit of the Act, for while the payment of compensation is not limited to cases of total inability to work, there has been no attempt made to proportion the weekly indemnity to the extent of the impaired capability or earning power of the injured.

As to the Difficult Cases.

The most difficult cases are those where the injury is of a permanent nature but the disability resulting therefrom is only partial, such as the loss of one or more fingers, an eye, or even an arm or a leg. In these days of modern surgical appliances a substitute for the lost member can be obtained that may enable the injured to continue his occupation, but not, of course, upon equal terms with an uncrippled man. The actual total disability resulting from injuries of this kind is not of very long duration, lasting only from one to six months, but while the half wages received during that period would hardly be sufficient to furnish an artificial substitute for the lost member, yet the Workmen's Compensation Acts of the Provinces (with the exception of Alberta, which provides for half wages during partial disability), seem to contemplate payment only during the time the injured is totally unable to do any work whatever. It is provided, however, that the compensation award may be reviewed after the expiration of a prescribed period by either party and either discontinued, or, at the request of the employer, a lump sum may be awarded in lieu of weekly compensation. The amount of the lump sum to be paid in lieu of compensation is left to the discretion of an arbitrator whose decision is not always satisfactory. There are cases where for the loss of one finger the arbitrator awarded the maximum amount payable under the Act.

The effect of the Workmen's Compensation Act is to make the employer a guarantor or insurer of the safety of his workmen except as against the result of his own misconduct or neglect. But while the employer becomes an insurer of his employees' safety to the extent that he may be called upon to pay compensation for accidents received in his employ (and that apart from any question of negligence upon his, the employer's part) he is not in a position to determine the limit of his liability and make provision to meet it.

What the Difference May Be.

Nearly every accident to an employee imposes upon the employer some form of legal liability either under the Common Law, the Liability Act or the Workmen's Compensation Act, and the extent of his liability depends upon the rule of law under which he may be liable, and this is determined by the particular circumstances of each accident. It takes an expert solicitor to distinguish the line of demarcation between liability under these different rules of law and yet the correct determination of this question may mean a difference to the employer of $5,000 or $6,000. A verdict for $7,000 or $8,000, at Common Law, is not unusual for injuries for which under the Workmen's Compensation Act the maximum limit would be $2,000.

The employer cannot, of course, foresee how many accidents he will have or the circumstances of the same. He is, therefore, unable to determine what amount he will be called upon to expend. As already pointed out, the statutory laws of the provinces vary greatly, so that an employer doing business in one province cannot always use a compensation example there as a comparison with an accident incident in another province. There may be no liability in one instance, while in another the employer may be called upon to pay a large sum in compensation. The law's delay is another thing that an employer must take into consideration in calculating the cost of his labor accidents. The injured is allowed at least a year within which to make claim at Common Law. Some time ago I was talking with a contractor who was congratulating himself upon the completion of a difficult contract with very few accidents and no law suits resulting therefrom. Shortly thereafter he was sued and compelled to pay a large amount in the settlement of the claims of employees who were injured and had returned to work without making claim. Employees will sometimes refrain from suit for fear of losing their position, but as soon as the work is completed or they lose their job they consult a lawyer and the employer has to face a claim for damages, and either pay up or else be put to considerable expense in defending an action.

Indefinite Limit of Liability.

I observe in the draft of the proposed Workmen's Compensation Act for the Province of Quebec that:—

> "A demand to revise the amount of the compensation, based on the alleged aggravation or diminution of the disability of the person injured, may be taken during the four years next after the date of the agreement of the parties as to such compensation, or next after that of the final judgment. Such demand shall be in the form of an action at law."

Further, while a maximum limit of $2,000 is mentioned it is provided:—

> "The court may reduce the compensation if the accident was due to the inexcusable fault of the workman, or increase it if it is due to the inexcusable fault of the employer."

The bad effect of this indefinite limit of liability and opportunity for revision within four years can readily be foreseen. The average employer of labor cannot afford to take the risk of being compelled to pay a large sum in damages and of having his expected profits reduced by a judgment on an accident claim. The necessity of making an immediate settlement of an unexpected adverse judgment on a claim for liability arising out of an accident, or else have his property seized in execution, may tax the resources of any but the most wealthy of employers beyond his power and, by depriving him of the means to meet the ordinary demands of his business, throw him into insolvency. He may have his credit seriously impaired by the effect of damage suits even though there is no liability upon his part.

Since labor accidents have been made a charge upon the industry, naturally the employer would prefer to set aside or pay an ascertained amount annually than to take the chances of being compelled to pay a large amount. By the payment of an annual premium based upon the estimated amount of his annual payroll he can protect himself against loss on account of legal liability resulting from accidents to his employees.

(To be Concluded.)