STATE CONTROL OF INSURANCE

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

BY W. D. AIKEN

(Continued from last issue)

In referring to the question of the jurisdiction of the Law Courts in matters pertaining to compensation it should be clearly noted that there are two distinct phases to be dealt with.

The Common Law right is simply the privilege which rests with any individual to appeal to the Courts on a question of damages independently of any Compensation or other Statute, but apart from this there is a right of appeal to the Courts under certain Compensation statutes for the proper enforcement of the benefits. In practice such appeals generally involve the question of interpretation alone.

In certain territories the right of appeal to the Law Courts has been entirely suppressed and in others the Common Law right alone has been done away with, leaving open an appeal to the Courts for the better interpretation of the Compensation statute.

Naturally the Common Law remedy is only of value to an injured employee in cases where he can establish fault and where he can overcome the well known defences open to an employer in this form of suit.

In the Province of Quebec the Common Law right has been taken theoretically from all those falling within the scope of the Compensation Law; that is to say the only remedy lies through the Compensation Law, but the right of appeal to the Law Courts remains and there is an important feature of the Statute which permits increased or diminished compensation in the case of gross negligence on either side. This is the safety valve which brings the system onto practically the same basis as the British laws. Whereas in Britain a separate Common Law suit may always be taken in cases of gross negligence (and this is the system which the British Committee recommend to be continued), in the Province of Quebec when gross negligence is averred the case still falls within the Compensation Law but the amount of compensation is not subject to any limit.

When the Common Law remedy was taken away in Certain States to make way for State Insurance, it was argued that it was wrong to compel the workmen to sue in the law courts for reparation for injuries, that the vast majority of workmen had no desire to undergo the ordeal of a law suit with a wealthy Employer and that the Common Law was a relic of the barbarous feudal times. It is wrong to compel the horse to drink if he does not want to—therefore give him no water at all.

But here let it be said that although American Common Law was founded exclusively on English precédents—in fact in its beginning was purely English Law as far as Blackstone had taken it in his commentaries, the two systems had gradually drifted apart owing to the attitude of the higher courts in either Country as each question came up for interpretation. This discrepancy is quite evident in cases of personal injury involving master and servant.

The three Common Law defences of the employer had lost much of their weight in Britain but had become stronger than ever in the United States. For this reason and the fact that Compensation Laws had not generally been enacted there was a demand for some change, and the new idea of State insurance was taken to kindly and the more or less difficult Common Law was forgotten about. But the situation was very different in the Canadian Provinces where the same stock in trade arguments were imported by those interested in the promotion of a State scheme.

The Ontario Common Law had more closely followed British lines and was much more substantial from the workmen's view-point. The suppression of this remedy took away something of much greater value than existed in the United States. At best the Common Law remedy was not a form of procedure to be invoked upon any occasion, or from which to expect adequate compensation in the majority of cases. Its proper place in the scheme is merely to take care of these extreme cases which are referred to in the Quebec Statute as cases of "gross negligence"—where the ordinary compensation benefits are not sufficient. In this way the Common Law remedy is merely a safety valve or emergency brake, not to be used at all times if we would economise but nevertheless absolutely necessary in certain circumstances.

The British Committee apparently found that the Common Law remedy was very seldom resorted to but they did not follow the lead of other Commissions enquiring into the subject who having found that the Common Law was "not popular" discarded it. (The emergency brake is not popular—it is seldom resorted to—it is hard on the machine—therefore it should be dismantled.)

The next important question that confronted the British Committee was the certainty of payment of compensation.

The evidence showed that many small employers did not insure, and the question of their ability to pay the benefits of the Statute was sometimes a matter of doubt. It was therefore recommended by the Committee that a claim for compensa-