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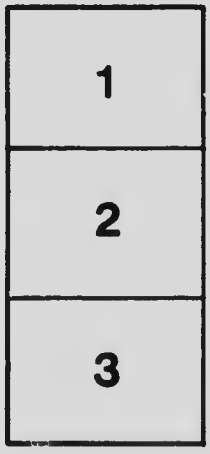

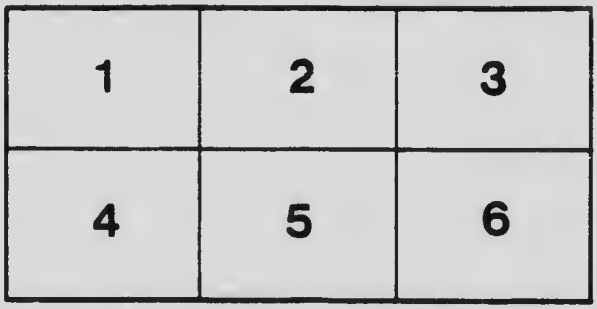

EMPLOYERS' LIABILITY

TO THEIR SERVANTS

AT

COMMON LAW.

AND UNDER THE

EMPLOYERS' LIABILITY ACT, 1880,

AND THE

WORKMEN'S COMPENSATION ACT, 1906.

BY

C. Y. C. DAWBARN, M.A.,

BARRISTER-AT-LAW, INNER TEMPLE AND NORTHERN CIRCUIT.

THIRD EDITION.

BY

THE AUTHOR.

WITH NOTES ON THE CANADIAN LAW

BY

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TO

THE RIGHT HONOURABLE SIR ROBERT ROMER, G.C.B.,

FORMERLY ONE OF THE

LORDS JUSTICES OF THE COURT OF APPEAL,

THIS BOOK IS,

BY PERMISSION,

RESPECTFULLY DEDICATED.

PREFACE

TO THE THIRD EDITION.

In preparing this edition for the press, my one object has been to make it as complete as possible, and in a form most serviceable to the profession. Like its predecessor, this Act, with its numerous inter-relating provisions, does not lend itself to simple annotation, and I have therefore dealt with it in subjects, at the same time giving in the Act *in extenso* references to the pages where any particular words or clauses are dealt with. By this means readers will secure the double advantage of a text-book methodically arranged, and an Act fully annotated clause by clause.

Another invaluable feature of the book is the Canadian Notes by Mr. A. C. Forster Boulton, M.P. For lucidity and crispness they are all that can be desired, and though the cases he cites may not be authorities in our English Courts, yet in disputed points as expressions of opinion they always command the greatest consideration.

In Appendix B. I have given additional Forms, based on those of an actual case fought right through to the House of Lords, and the taxed Bill of Costs in connection with it. These last, together with the more formal precedents also given, should be valuable not merely as

examples of what may be charged, but as a reminder of what steps should be taken. In the case as fought, the facts were simple and admitted. They involved a point of law now fortunately obsolete, and it seemed to me this addition would be more serviceable if I adapted other facts as simple, and more in accord with the present Act. These were unhappily furnished by the fall of a window cleaner from a ladder and his consequent death. I have therefore taken advantage of this change to further deal with that most perplexing of subjects, casual labour, in one of its many aspects.

Under this head I have been frequently asked what is a satisfactory insurance clause. The one I have given(*a*) should, I think, be fair to both parties. What one has to remember is, that whilst we all implicitly rely on our insurance companies to meet claims where just, still, as men of business, we have a reasonable preference for their also being legally bound. On the other hand, we must not expect to cover a 50*s.* risk with an extra half-crown. If we employ a handyman to put a slate on a roof and he is killed, we must not be too severe on a company that does not quite see the matter with our eyes, when we think he should be included in "domestic servants occasionally employed." But these risks may probably not prove as serious to the companies as the continual drain on them for payments of small amounts, and it may well be queried, Have sufficient precautions been taken to prevent malingering and the prosecution of small but inflated claims?

But here I am leaving the province of commentator and wandering into the tempting fields of the would-be

(*a*) See page 518.

lawmaker, wanting to set this world right in a day. The enormous size of this book dealing with one short Act, proves the folly of having originally left the beaten paths of experience and well-proved forms in attempting a short cut for the millennium. Perhaps I may be forgiven the criticism, but after months of hard study I am satisfied the fatuous Act of 1897 was so bad in conception, so bad in principle, and so bad in execution it never could or can be amended to even make a tolerable measure. As regards that Act one thing only was desirable—its total repeal and the blotting out from the Statute Book of every line of its most unfortunate provisions. This done, and the Employers' Liability Act of 1880 amended and extended to meet the requirements of the present day, and we could put our law and practice once more on a reasonable basis, and once more secure to the general public that greatest of civic rights, a certain law with certainty administered.

C. Y. C. DAWBARN.

11, King's Bench Walk,
Temple.

PREFACE

TO THE SECOND EDITION.

The present volume is a new edition, brought up to date, of the Author's work on the Liability of Employers at Common Law and under the Act of 1880. To this has been added a third book on their Liability under the Workmen's Compensation Act of 1897.

This latter has proved an extremely difficult subject to deal with. In fact, at times it has seemed an almost impossible task to give any clear and concise statement of the law. When the learning on a small Act of Ten Sections reaches the appalling proportions indicated by a text book of this size, it is more than clear that mere annotation, section by section, however useful to the expert, must fail to be of service to the ordinary practitioner.

When an Act is so full of cross references and so confused as this Act is, annotations cannot but suffer from the same inherent vice, and be themselves also confused and involved. Before one can follow the learning on one Section he must have an intimate acquaintance with the whole of the Act. If one would have an example of this, and the highest intellectual treat possible at the same time, let him read the most admirable piece of reasoning of Romer, L. J.—an effort almost equal to some of the masterpieces of the late Lord Justice Bowen—in his decision in *Powell* v. *Main Colliery Co.* (*a*), in the Court of Appeal.

Here, on the one simple question as to what is making a claim, more than half the Act and its schedules had to be passed under review; and when a lawyer can fully appreciate this judgment, what he knows of the Act will be anything but trifling.

Having thus been compelled to abandon the method of annotation, it has seemed best to the Author to adopt a plan

(*a*) The *Times* report is excellent but condensed, and it must be read in 69 L. J. Q. B. 542.

equally familiar to the profession, and that is to deal with the subject as one would when advising on evidence, and take and discuss *seriatim* every point necessary to be proved by the applicant to establish a right under the Act, followed by those points also open to the respondents to be taken by way of answer. By this method he believes the work will be of the greatest service to the reader. He cannot promise freedom from all doubts and ambiguities, but he trusts that, with a very little study, the lawyer in every day practice may so sufficiently master the Act as to appreciate what these doubts and ambiguities are.

One word further to the reader not very intimately acquainted with the subject as to how to make this work most useful.

First let him read the Act through as often as his patience will permit. Next let him read the epitome of the Articles dealing with the points to be proved by applicants and respondents respectively; again going through them as set out with more detail in the Table of Contents. If, then, he will attack the particular Article and Cases dealing with his own particular point, he should be able to arrive at a sound, logical conclusion, and one that should at least stand the test of a Court of first instance. More were dangerous to promise.

Many points remain to be settled, and, unfortunately, no point can be regarded as settled until it has passed the ordeal of the House of Lords.

Still, notwithstanding the abuse heaped upon it—not wholly undeserved—the Act is steadily becoming better understood, and if studied methodically, and the new decisions read and noted as they occur, it should not present more difficulties than many another piece of legislation which now adorns the Statute Book of the realm.

C. Y. C. DAWBARN.

11, King's Bench Walk,
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BOOK THE FIRST.

THE

LIABILITY OF EMPLOYERS

AT

COMMON LAW.

CHAPTER I.

GENERAL PRINCIPLES.

Broadly speaking, a man is responsible for his own acts and his own acts *only*. This is the rule. Still more broadly stated the great exception is, a man is also responsible for those who act for him and by his authority. If a man, therefore, by his own acts or by the acts of another for whom he is responsible, inflicts an injury upon another—and by injury (*a*) I mean the *injuria*, not the mere *damnum* of the lawyers—he is liable to indemnify that other. If a man by his own acts so injures another, whether he be a master or servant, and whether another be answerable for him or not, he himself is always responsible (*b*), but if a man by the acts of another for whom he is usually responsible injures another, then in one great class of cases (apart from statute or contract) he is not liable,

(*a*) For a discussion of the meaning of *injuria damnum* and *injuria sine damnum* and *damnum sine injuria*, &c., see *Ashby* v. *White*, Lord Raymond's Reports, 938, and *Chasemore* v. *Richards*, 7 H. L. C. 349.

(*b*) *Stone* v. *Cartwright*, 6 T. R. 411, this does not enable a man to obtain compensation twice for the same injury; *Wright* v. *London Omnibus Co.*, 2 Q. B. D. 271.

namely, when that other who is injured is the fellow-servant of the person for whom he is responsible, and is engaged in a common occupation. This is known as the doctrine of Common Employment, and in other words its meaning is this: When a man enters another's employ he does so with his eyes open and with a knowledge of the risks incidental to it, including those due to the negligence of fellow-servants, and these he contracts to take, *e.g.*, a miner or a sailor, whose occupations of their very nature are dangerous (*c*) (1).

(*c*) Note he only takes risks incidental to the employment. In *Mansfield* v. *Baddeley*, 31 L. T. 696, a dressmaker was asked by her employer to go into the kitchen for him. She did so, and was bitten by a savage dog. Held, she had not contracted to take the risk of such dog.

So he does not contract to take concealed risks. These his master must disclose or he will be liable. A butcher employed his man to cut up a carcase that was diseased. The man was ignorant it was infected, and was injured. Held, his master was liable: *Davies* v. *England*, 33 L. J. Q. B. 321.

A workman was injured through using an unsound ladder. He did not know it was unsound. His master did, and should have warned him. As he did not, he was held liable: *Williams* v. *Clough*, 27 L. J. Ex. 325.

But if a master fully disclose the nature of the service, he may invite servants to work for him under any dangerous conditions not actually illegal, and not be liable to them. It is a matter of contract, so much pay so much risk: *Woodley* v. *Met. Rly. Co.*, 2 Ex. D. 384.

Canadian Note.

(1) Liability of Master for Injury to Servant.

I. *At Common Law.*

(a) For Acts of Fellow Servants.

Common employment—Quebec law.]—As the doctrine of common employment does not prevail in the Province of Quebec, acts or omissions by fellow-servants of the deceased do not exonerate employers from liability for the negligence of a servant which may have led to injury. (*The Queen* v. *Filion*, 24 S. C. R. 482; *The Queen* v. *Grenier*, 30 S. C. R. 42; *Asbestos and Asbestic Co.* v. *Durand*, 30 S. C. R. 285.)

In Ontario and the other English-speaking provinces the doctrine of common employment does apply, and the following cases will show how far the doctrine has been pushed up to the passing of the several Acts making employers liable for accidents caused by negligence of fellow-workmen.

Plaintiff as administratrix sued defendants for the death of her husband, caused by a railway accident. It appeared that deceased, with three other and a foreman, were employed with a hand-car in clearing snow from the track near Limehouse Station. The foreman saw a freight train approaching, upon which he

Before 1837 there is no record of any case where a master was sought to be made responsible for an injury incurred in his service, except in those cases where the injury could be traced directly or indirectly to his own personal negligence or breach of duty. In

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Canadian Note (1)—*continued.*

left the men, telling them "to clear," and walked towards it, waving a flag. Two of the men stepped aside when it came up, but deceased and the other man ran in front of it along the track until it drove the hand-car against and killed them both. One of the brakesmen on the train swore that the brakes were defective and that the train could not therefore be stopped in obedience to the proper signal which was up. It appeared, however, that the defects mentioned by him could have been removed by tightening a bolt or shortening a rod, which anyone employed by the defendants could have done in a few minutes; and other witnesses swore that, with the brakes as they were after the accident, the train could have been stopped; that it came up at a speed showing no intention to stop at all, and, with the engine reversed, ran a quarter of a mile past the station, and that at the next station, on the same grade and with the same brakes, it was stopped without difficulty. Held, that these facts conclusively showed the negligence not to have been that of the defendants but of their servants engaged in a common employment with deceased, and for which therefore defendants were not responsible. (*Plant* v. *Grand Trunk R. W. Co.*, 27 U. C. R. 78.)

Plaintiff as an employee of defendants was sent by the foreman of the works to excavate earth from a bank below while others were loosening it from above. While so engaged, a quantity of earth fell down upon him and broke his leg. Held, that defendants were not liable, the accident having been caused by the negligence of a fellow-servant. (*O'Sullivan* v. *Victoria R. W. Co.*, 44 U. C. R. 128.)

Negligence of servant attributable to master—Under what circumstances—Pleading.]—Declaration, that the defendant, an hotel keeper, and not a contractor or builder, was engaged in erecting a building, being an addition to an hotel, and employed one G. as architect of said building to furnish the plans, select the materials, employ men to erect the building, and generally to superintend the erection thereof for the defendant, and represent the defendant therein; that G. in pursuance of his duty and authority, employed one M. as sub-foreman in the erection of the building, and the plaintiff as a workman under him; that G. directed M. to remove some lumber to the upper floor, which the plaintiff with other workmen under the defendant was ordered by M. to do; and the plaintiff in pursuance of his employment was lawfully on the upper floor, the said floor having been constructed by the defendant and G. in the pursuance of his duty and employment as aforesaid, when, by the insufficiency of the beams supporting said floor—which insufficiency was known to the defendant, though unknown to the plaintiff—and the negligence of G. and the defendant in the construction of said floor and building, the said floor gave way, and thereby plaintiff was injured. Held, on demurrer, that the declaration showed a good cause of action against defendant, for it must be taken to mean that the defendant had the building under his own care and supervision so that what G. did was the act of the defendant only, and not the act of G. as a fellow-workman with the plaintiff. (*Macdonald* v. *Dick*, 34 U. C. R. 623.)

that year, the servant of a butcher was riding in a van which was not under his control, and which in consequence of being overloaded by the negligence of another fellow-servant, broke down and injured him. He sought to make his master responsible for such negligence, but failed. This was the great case of *Priestly* v. *Fowler*, 3 M. & W. 1, 1837. Here Lord Abinger, in delivering judgment, said:—"In truth, the mere relation of the master and the servant can never imply an obligation on the part of the master to take more care of the servant than he may be reasonably expected to take of himself. He is no doubt bound to provide for the safety of his servant, in the course of his employment, to the best of his judgment, information, and belief. The servant is not bound to risk his safety in the service of his master, and may, if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the places in which danger may be incurred, if not in all, he is just as likely to be acquainted with the probability and extent of it as his master" (*d*).

(*d*) A stranger who volunteers his service is in the same position as a fellow-servant, *Degg* v. *M. R.*, 26 L. J. Ex. 171. So if his aid has been solicited by another servant, *Potter* v. *Faulkner*, 31 L. J. Q. B. 30; but not if requested by the master, *Abraham* v. *Reynolds*, 5 H. &

Canadian Note (1)—*continued.*

Constructive negligence of master.] Negligence on the part of a manager or foreman is not constructive negligence on the part of the master. Actual personal negligence of the master must be established, as a foreman is but a fellow-servant, though it may be of a higher grade. *Redd* v. *Bell*, 13 O. R. 47, and *post*, p. 17.

Tramway—Negligence of fellow-servant to replace rail—Patent defect.]—The defendants, the proprietors of extensive mills, constructed a tramway to carry lumber from one end of their yard to the other, the cars used being drawn by a steam-engine. There was no passenger car, but the employees were permitted to be carried on the cars used. The track was laid on ties placed on wet ground, very little ballasting was done, and none where the accident happened, and there was other evidence of faulty construction. The plaintiff was going to his work on one of the cars when it was thrown off the track by reason of a misplaced rail, caused by the defective construction. The defendants employed a competent foreman, who delegated the duty of keeping the track in repair to one B., a fellow-servant of the plaintiff, and it was shown that B. neglected to replace the rail, though he was aware of its being displaced. Held, that the accident having been caused by the negligence of a fellow-servant, the defendants were not liable. *Quære*, apart from this, whether the plaintiff could have recovered, he being aware that the road was without ballast, the defects in construction being patent, and such tramway being known not to be substantially built, or of a permanent character. *McFarlane* v. *Gilmour*, 5 O. R. 302;

In Scotland a different opinion had prevailed and continued for some time longer, until the great case of *Bartonshill Co.* v. *Reid*, 3 Macqueen 266, 1858, when it was finally decided by the House of Lords that this was not correct, and that the law in Scotland was the same as in England. In this case the plaintiff's husband was a miner in the employ of the defendants. By the carelessness of the engine driver the cage in which he was ascending from the mine was overdriven and overturned, and he himself was thrown out and killed. In giving judgment, Lord Cranworth said:—"But do the same principles," *i.e.*, the principles by which an employer ought to be liable to the public for the acts of his servant, and which he had just stated, "apply to the case of a workman injured by the want of care of a fellow-workman engaged together in the same work? I think not: when the workman contracts to do work of any particular sort he knows, or ought to know, to what risks he is exposing himself: he knows, if

N. 143, 1871, nor if he has a common interest in goods that are being unloaded, *Wright* v. *L. & N. W. R.*, 1 Q. B. D. 252; and if he be a passer-by, and be casually asked to assist, he is not a volunteer, *Cleveland* v. *Spier*, 16 C. B. N. S. 399.

A pilot is not a fellow-servant with the master and crew of the ship he takes control of compulsorily, *Smith* v. *Steele*, 44 L. J. Q. B. 60.

In *Ramsay* v. *Quinn*, Ir. R. 8 C. L. 322, it was held that the captain of a ship is vice-principal and not fellow-servant, but this was disapproved of in *Hedley* v. *Pinkney*, (1891) A. C. 222, when it was held the captain and each of the crew of a vessel are fellow-servants in a common employment, so that the owner of a vessel is not responsible for an accident caused to the one through the negligence of the other.

Canadian Note 2).

Two essentials of common employment.]—The decisive test of whether or not the relation of fellow-servants exists is furnished by the inquiry as to who has the control and direction of the negligent and injured persons. There must not only be a common employment but a common master. (*Hastings* v. *Le Roi*, 10 B. C. R. 9.)

The plaintiff being engaged in the service of defendants in repairing a bridge, was injured by the fall of the hammer of a pile driver, caused, as was found, by the negligence of one M. The work was being performed in R.'s section, R. being a councillor, and M., who was the reeve of the municipality, was employed at day wages by R. as foreman. Held, that M., though reeve, was not acting in that capacity, but as a hired fellow-servant with the plaintiff; that there was nothing to so identify the defendants with him in the work, as their chief officer, as to take the case out of the ordinary rule governing the relation of fellow-servants, and that the plaintiff therefore could not recover. (*Drew* v. *Township of East Whitby*, 46 U. C. R. 167.)

such be the nature of the risk, that want of care on the part of a fellow-workman may be injurious or fatal to him, and that against such want of care his employer cannot by any possibility protect him. If such want of care should occur, and evil is the result, he cannot say that he does not know whether the master or the servant was to blame. He knows that the blame was wholly that of the servant. He cannot say the master need not have engaged in the work at all, for he was a party to its being undertaken. Principle therefore seems to me opposed to the doctrine that 'responsibility of a master for all consequences of his servant's carelessness is applicable to the demand by a fellow-workman in respect of evil resulting from the carelessness of a fellow-workman when engaged in common work.'"

Following this case, and of the utmost importance, was another Scotch appeal to the House of Lords, *Wilson* v. *Merry*, L. R. 1 H. L. Sc. 326, 1866 (2). Until this case there was a prevailing opinion, at least in Scotland, that a fellow-workman who was practically *in loco magistri* in the place of the master as superintendent foreman, &c., was so identified with the master that the master was liable for his actions exactly as his own. But in this case it was held otherwise. Here the son of the plaintiff was a miner, and was killed by an explosion of fire-damp which had accumulated owing to the defective erection of a stage which had shut it in. The erection of this stage was by one Neish, who was the superintendent of the defendants for underground operations,

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Canadian Note 2.—*continued.*

Negligence of servant attributable to master—Interference by director—Competency of superintendent.]—In an action for damages by the administratrix of M., an employee of the defendant company, who was killed by an explosion of defendants' powder mills, caused by a portion of the machinery being out of repair, it was shown that W. a director of the company, had, some time before the explosion, when the works were idle, given directions to C., the superintendent and head of the works, to have the defective portions of the machinery repaired before recommencing operations, but C. neglected to attend to it and the repairs were not made. It was not shown that W. in any way assumed to direct the practical working of the mills, or that he had any special knowledge or ability to do so, and there was no suggestion that C. was an incompetent or improper person to employ. Held, reversing the judgment in 12 O. R. 58, that the intervention of W. had not taken the case out of the general rule of law that the defendants were not responsible for an accident due to the negligence of a fellow-servant, which C. was. (*Matthews* v. *Hamilton Powder Co.*, 14 A. R. 260.)

and was a competent man. The reason for the decision was tersely given by Lord Cranworth:—"Workmen do not cease to be fellow-workmen because they are not all equal in point of station or authority" (*e*). [See also *Feltham* v. *England*, L. R. 2 Q. B. 33.]

It was practically to undo the mischief of this decision the Employers' Liability Act was ultimately passed in 1880. The doctrine of Common Employment was being pushed too far.

In considering this doctrine of common employment we find there are two essential ingredients in every case: a common work and a common master (*f*). Two servants may be employed by the same master, but in distinctly different occupations, *e.g.*, one may be his butler, the other his quarryman. In such case, if either be injured by the negligence of the other in the course of his regular service, the master cannot set up the defence of common employment, as there has been no common work. So, again, suppose the servant of one master, the contractor for the iron work of a factory, is injured by the servant of another master, the contractor for the cement or masonry. This master equally cannot set up the defence of common employment, as he is not their common master. What constitutes a common work and a common master often involves points of the greatest

(*e*) The manager of a Company practically acting by such manager is only a fellow-servant, and the fact that he has been appointed in pursuance of an Act of Parliament does not alter the fact of his being a servant, *Howells* v. *Landore Steel Co.*, 10 Q. B. 62, and see also *Conway* v. *Belfast R. C.*, 11 Ir. R. C. L. 345, where a manager and milesman were held fellow-servants.

(*f*) *Johnson* v. *Lindsay*, L. R. (1891) A. C. 371.

Canadian Note (2)—*continued.*

Quarry company—Works—Director acting as foreman—Defective appliances.]—One of the directors of a quarry company was appointed foreman of the works, with full powers of management, subject to the directors' control, and to such duties as might be delegated to him from time to time. The plaintiff, one of the company's labourers, claiming that he had sustained injury by reason of the foreman's negligence while acting under his instructions, brought an action at common law against the company. Held, so far as the action rested upon the liability of the company through the foreman, that there was no liability, as he was merely a fellow-servant of the plaintiff. Held, however, that an action might be sustained on proof of negligence of the company in not furnishing proper appliances for the quarrying operations. (*Fairweather* v. *Owen Sound Stone Quarry Co.*, 26 O. R. 601.)

nicety. As regards common work, I cannot find a case of different occupation which has been held to constitute a good answer to the defence of common employment, but the law will be found fully discussed in the following cases:—

In *Hutchinson* v. *York, &c. Rly.*, 5 Ex. 343, a servant of the railway company was travelling from work in their train when a collision took place owing to the negligence of other servants, and he was killed. Held, common employment, and that the plaintiff could not recover. That was on the facts proved, for in delivering judgment Baron Alderson laid down the law as above stated, and said: "We do not think a master is exempt from responsibility to his servant for an injury occasioned to him by the act of another servant when the servant was not at the time of the injury acting in the service of the master. In such a case the servant injured is substantially a stranger and entitled to all the privileges he would have had had he not been a servant" (*g*).

In *Waller* v. *South Eastern Rly.*, 2 H. & C. 102, the guard of a train was injured by the negligence of a ganger of platelayers in not keeping the permanent way in order. Held, plaintiff could not recover as there was common employment.

In *Morgan* v. *Vale of Neath Rly. Co.*, L. R. 1 Q. B. 149, the plaintiff was a carpenter in the employ of the railway company. Whilst at work on a shed close to the line some porters carelessly shifted an engine on a turn-table, and knocked down the ladder

(*g*) See also *Tunney* v. *M. R. Co.*, L. R. 1 C. P. 291, when the facts were very similar, and the injured plaintiff was leaving work at night.

Canadian Note 2 —*continued.*

b — *Occupation — Person employed in construction — Travelling by train — "To be safely carried."*]—The plaintiff was employed by the defendants to work at track-laying; and while so employed the defendants directed and required him to assist in bringing railway supplies to the place where they were being used; they also directed and required him to be carried as part of his employment on the defendants' trains; that accordingly he was received by defendants on a train, and, while so travelling, thrown off the train and injured. Held, (1) that if the plaintiff accepted a different employment from that originally contemplated, he became the defendants' workman in that new employment, just as he had been in his former employment. (2) That the train being under the management of the defendants' servants, the act of negligence was that of a common servant, and there was no cause of action against the defendants, the common employers of those servants. (*Wolf* v. *Ontario & Quebec R. W. Co.*, 10 O. R. 70.)

on which he was standing, and injured him. Held, the railway company were not liable as there was common employment.

In *Lovell* v. *Howell*, 1 C. P. D. 161, the plaintiff was a licensed waterman. He was employed by the defendant to moor and unmoor his barges, but not otherwise to assist in the general work of the firm. He had been to the office for orders, and on his way back to the wharf passed through, and had to pass through, the warehouse of his employer, and was knocked down by a sack of peas which another servant was negligently hoisting. Held, common employment, and plaintiff could not recover. After this case it would seem hopeless for plaintiff to rely on the distinction, want of common work.

Next, as to a Common Master. The cases on this point are much more favourable to the plaintiff. In *Wiggett* v. *Fox*, 11 Ex. 832, the plaintiff failed, but the facts were much against him.

There the defendant contracted to do certain work for the

Canadian Note 2 — *continued.*

A gas company engaged in laying a main in a public street procured from a plumber the services of H., one of his workmen, for such work, and while engaged thereon H. was injured by the negligence of the servant of the company. In an action for damage for such injury it was held that by the evidence at the trial negligence against the company was sufficiently proved. It was further held, that whether or not there was common employment between H. and the servant of the company was a question of fact, and it having been negatived by the finding of the jury, and the evidence warranting such finding, an appellate Court would not interfere. (*St. John Gas Light Co.* v. *Hatfield*, 25 S. C. R. 164.)

I. S. (husband of the plaintiff) was a servant and workman employed by certain contractors with defendants in ballasting defendants' railway. In performing such work certain cars and engines under the guidance and management of defendants' servants were used for the transport of materials and the conveyance of workmen employed by the contractors (said workmen not being servants of the defendants), to and from their residence and their work, for reward to the defendants. I. S. in his lifetime, being such workman, became a passenger on a car drawn on said railway by a locomotive under the defendants' management, to be carried from his place of work home, and as such workman and passenger, while lawfully on the car, was injured and died. Held, that the deceased could not have been considered a fellow-servant with those employed by the defendants. (*Sherman* v. *Toronto, Grey & Bruce R. W. Co.*, 34 U. C. R. 451.)

See also *Tapp* v. *Grand Trunk R. W. Co.*, 20 U. C. R. 116.

The doctrine of common employment is applicable when the servant whose fault caused the accident had left the employer's service before the injured servant entered his service. (*Hastings* v. *Le Roi*, 9 B. C. R. 551.)

Crystal Palace Co. In the course of it he let out parts as piecework to sub-contractors, who employed their own men. It was one of these latter who was injured by a servant directly employed by the defendant. The Court, having regard to the plaintiff being engaged in one common work, to his being paid by the defendant, being liable to be dismissed by defendant, and being under his control, also to the special printed regulations relating to piecework jobs, too long to set out, held, there was no such distinct service as to prevent the doctrine of common employment applying, and that, therefore, the plaintiff could not recover (*h*). In *Johnson* v. *Lindsay*, L. R. (1891) A. C. 371, *infra*, this case was commented upon, and only not overruled because it was presumed to be based on its own special facts.

The next case of importance is *Vose* v. *L. & Y. Rly. Co.*, 2 H. & N. 728, where it was held there was no common employment. The L. & Y. Rly. and the East Lane. Rly. had a joint station, and also employed common servants for shunting. The plaintiff's husband, in the sole employ of the E. L. Co., was killed by the negligence of an engine driver in the sole employ of the L. & Y. Rly. Co. No negligence being found against the shunter the plaintiff recovered. Similarly, in *Abraham* v. *Reynolds*, 5 H. & N. 143. The plaintiff was a servant in the employ of a carrier who did work for the defendants. Whilst receiving a load from the servants of the defendants he was injured. Held, no common employment (*i*).

(*h*) See also *Charles* v. *Taylor*, 3 C. P. D. 492. Here brewers employed a gang of men to unload coal, but paid one of them for all. Another of them was injured. Held, he was in the service of brewers and could not recover.

In *Murray* v. *Currie*, 6 C. P. 24, the plaintiff, the servant of a stevedore employed by the defendant, was injured by Davis, a servant of the defendant. Held, he could not recover.

In *Stamp* v. *Williams*, 12 T. L. R. 516, the question was one of fact, whether a stevedore or the ganger through whom he engaged the men was the real employer, as in *Cholam* v. *North Met. R. Co.*, 12 T. L. R. 611, and really had control.

In *Marrow* v. *Flimby Coal Co.*, 14 T. L. R. 583, a man engaged by a pit sinker sued the company, and it was held they were not his employers.

(*i*) In Scotland a different law used to prevail. A common work, in a common organization, or with a common object, was held to come

In *Warburton* v. *G. W. Rly.*, L. R. 2 Ex. 30, a porter in the employ of the L. & N. W. Rly., at their station, Manchester, was injured by a servant of the G. W. Rly., who had running powers in the same station. Held, no common employment.

In *Swainson* v. *N. E. Rly.*, 3 Ex. D. 341, the husband of the plaintiff was a signalman in the employ of the G. N. R., but his duty was also to attend to the defendants' trains. By the negligence of a driver of the N. E. Rly. he was killed. Held, action maintainable and no common employment.

The most important case is that of *Johnson* v. *Lindsay*, L. R. (1891) A. C. 371, recently decided in the House of Lords. Here all the law and authorities are carefully reviewed. The facts were practically to the following effect. The appellant, Johnson, was injured by a bucket being negligently dropped on him by a servant of Messrs. Lindsay. Johnson was employed by the contractor who did the building, and Messrs. Lindsay were the contractors who did the concrete work. The contention that it came within the principle of *Wiggett* v. *Fox* (*supra*) failed, and Johnson recovered, the House of Lords intimating that if *Wiggett* v. *Fox* bore the interpretation tried to be put on it by Messrs. Lindsay's counsel it would have to be overruled.

As all the above cases turn on the precise facts involved, and as it is impossible to give here more than the general effect, they should be themselves consulted if anything depends on their being exactly in point. Whilst the principle of the law is clear and simple, viz., in common employment there must be a common master as well as a common work, its application to the particular facts is often much involved and the subject of much contention (*k*).

within the doctrine of common employment, *e.g.*, in *Congleton* v. *Angus*, 1887, 14 R. 309, the facts were similar to those above. Congleton was a carter for a contractor. Whilst carrying grain from a ship to a store of the defendant he was killed by the negligence of one of the defendant's servants. Held, his representatives could not recover; see also *Woodhead* v. *Gartness*, 1877, 4 R. 469. This, however, is not law now. In *M'Callum* v. *North British Rly.*, 30 Sc. L. R. 127, it was held to be overruled by *Johnson* v. *Lindsay* (*infra*), so that the law in England and Scotland is now the same.

(*k*) What constitutes a master often involves distinctions that are extremely fine. When a plaintiff has no right otherwise, his endeavour is to prove that the master of the servant who injured him is not his

We have thus seen how far an employer is relieved from responsibility for the acts of his servants or agents to their fellow-servants. As this in no way diminishes his responsibility for his own acts or negligence nor for those of his partner (*l*), it will be well to briefly consider what duty an employer owes to his servants at Common Law.

In the first place, there is no duty on a master personally to superintend the work. Lord Cairns thus states the law in *Wilson*

master. The test of whether an employer is master or not is, has he control over the servant, or has some one else; and if he has parted with such control by lending or hiring him to another he is no longer liable. (*Rourke* v. *White Moss Colliery Co.*, 2 C. P. D. 205; also *Laugher* v. *Pointer*, 5 B. & C. 547, 1826, followed in *Quarman* v. *Burnett*, 6 M. & W. 499.) In *Moore* v. *Palmer*, 51 J. P. 196, 1886, C. A., *coram* Esher, Bowen, and Fry, a stevedore, to load a ship, hired from the defendant a donkey engine on a barge, with a man, Norton, to work it. The duty of the plaintiff's husband, the foreman of the stevedore, was to give the word for hoisting or lowering, and through Norton's negligence, in mistaking the signal, a sack fell and killed him. Held, plaintiff could recover from the defendant, as he still retained the control over and was master of Norton; but in *Donovan* v. *Laing, &c.*, (1893) 1 Q. B. 629, wharfingers, to load a ship, hired from the defendants a crane with a man, Wand, to work it. The duty of the plaintiff, a workman of the wharfingers, was to give the word for hoisting and lowering, and through Wand's negligence in not waiting for the signal, the crane swung round and injured him. Held, plaintiff could not recover from the defendants as they did not retain control over Wand. Unfortunately, in this case *Moore* v. *Palmer* was not cited, so we do not know in exactly what respects the two cases are to be distinguished.

In *Manning* v. *Adams Bros.*, 32 W. R. 130, 1884, a stevedore unloading a ship for the defendants agreed to take a penny per ton less if assisted by the crew. The plaintiff, his foreman, was injured by the negligence of one of such crew. Held, the defendants, the shipowners, were not liable, as the crew were under the control of the stevedore, and therefore fellow-servants. But in *Master* v. *Innes & Co.*, 10 T. L. R. 403, though a boy was engaged, paid, and dischargeable by a sub-contractor, still it was held there was some evidence for the jury as to who was principal employer.

See also the cases of *Cameron* v. *Nystrom*, (1893) A. C. 308, where the servant of a shipowner was injured by the servant of the stevedore and recovered; *Oldfield* v. *Furness*, 9 T. L. R. 515, C. A., where the question was whether one Johnson was the foreman or independent contractor of the defendants; *Wild* v. *Waygood*, (1892) 1 Q. B. 783, another case of a borrowed workman held to be servant of borrower; and *Murray* v. *Currie*, L. R. C. P. 24. As to the position of butty men see *Brown* v. *Butterley*, 53 L. T. 964, and, similarly, *Robertson* v. *Russell*, 1885, 12 R. 631.

(*l*) *Ashworth* v. *Stanwix*, 30 L. J. Q. B. 183; an employer is also answerable for his wife acting for him, *Miall* v. *English*, 15 L. T. 249.

v. *Merry*, L. R. 1 Ap. Sc. 332, 1868—"The master is not and cannot be liable to his servant unless there be negligence on the part of the master in that, in which he, the master, has contracted or undertaken with his servant to do. The master has not contracted or undertaken to execute in person the work connected with his business. The result of an obligation on the master personally to execute the work connected with his business, in place of being beneficial might be disastrous to his servants, for the master might be incompetent personally to perform the work. At all events, a servant may choose for himself between serving a master who does and a master who does not attend in person to his business. But what the master is, in my opinion, bound to his servant to do in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so (*l*), and furnish them with adequate materials and resources (3). When he has done this he has, in my opinion, done all that he is bound to do." If, however, a master does interfere he must do so competently.

(*l*) Is this too broad, or is the rule as to superintendents acting in place of masters who do not attend to business and other servants the same? As to the former, does a master warrant their competence, or only that he has used care in selecting them? Does the rule as stated by Lord Cairns, in the same case, almost in the next sentence, equally apply to them? As was said in *Tarrant* v. *Webb*, 25 L. J. C. P. 263, "negligence cannot exist if the master does his best to employ competent persons. He cannot warrant the competency of his servants." "To remedy this and make masters who do not personally attend to their business equally responsible with masters who do was one of the main purposes of the Act": Lord Watson, in *Smith* v. *Baker*, (1891) A. C. p. 351. This being so, the common law duties of a master in this respect will only be of importance in a case where the Act does not apply.

See No[illegible], as to selection of superintendent.

Canadian [illegible]

(3) *Delegation of duty by master—Selection of servants—Reasonable care—Competency of delegate.*—A master may, among other duties, delegate to another the duty of selecting fellow-workmen or servants, and in such a case the master's obligation is limited to the exercise of a reasonable care in selecting a competent person for such purpose. In an action against defendants, the owner of a vessel, for employing incompetent sailors whereby an accident happened to the plaintiff, it appeared that the duty of hiring the sailors had been delegated by the owners to the captain, a competent person for such purpose, and that he had hired the men in question. Held, that the defendants were not liable. (*Wilson* v. *Hume*, 30 C. P. 512.)

In *Warren* v. *Wilde* (Weekly Notes, 1872, 87), where there was a defect in a gas pipe, and a barmaid was injured by an explosion, owing to the master trying to put it right himself, instead of sending for a plumber, she was held entitled to recover. So in *Roberts* v. *Smith*, 2 H. & N. 213, the plaintiff, a bricklayer, was injured by a scaffold giving way, owing to some of the timber, called putlogs, used in its construction, being rotten. This the master knew, and the plaintiff did not, and as there was evidence

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Canadian Note (3)—*continued.*

Negligent employment of incompetent person—Railway company.]—In an action against a railway company for the death of D., an engine-driver in their employment, it was alleged that defendants negligently employed one R., an incompetent person, as switchman, and that by his incompetency the collision occurred. It appeared that R. neglected to raise the semaphore at the east end of the Stratford Station, so as to prevent D.'s train, going west, from entering the yard while a freight train was coming from the west, and this caused the accident. According to the testimony on both sides R. was an intelligent man, employed at work which one witness said could be learned in a day, another in two or three weeks, and after being a week about the yard he had performed this work regularly for two weeks without complaint until this occasion. A verdict having been found for the plaintiff, it was held that there was no evidence to go to the jury that defendants negligently employed an incompetent person; that for R.'s neglect, he being D.'s fellow-servant, the plaintiff clearly could not recover, and a nonsuit was ordered. (*Thorrill* v. *Grand Trunk R. W. Co.*, 25 U. C. R. 517.)

The corporation of the city of Ottawa contracted with the defendant Doyle to lay down sewer pipes on certain streets in the city of Ottawa, and by their engineer and the inspector the corporation exercised superintendence over the work as it progressed. Doyle employed one McCallum to engage workmen and oversee the work. McCallum engaged Murphy, the husband of the plaintiff. During the progress of the work the sides of the sewer caved in through the faulty and negligent shoring of the wall thereof, thereby causing the death of Murphy. Held, that under the evidence, the corporation were not liable; that no recovery ought to have been had against either of the defendants as there was no evidence from which it could have been reasonably inferred that the deceased was ignorant of the dangerous character of the work he was engaged in, of which he had quite as much knowledge and means of knowledge as his master, and with the knowledge of which he voluntarily engaged in it; but as the defendant Doyle had not moved against the verdict found against him it was allowed to stand. Held also, that the corporation by their inspector had not so interfered with the conduct of the work by the deceased as to assume personal control over the deceased within *Stephens* v. *Commissioners of Police of Thurso*, 3 Court of Session Cases, 4th series, 535. Held also, that the action being founded on the relationship of master and servant, both defendants could not be held liable, and that the plaintiff by retaining her judgment against Doyle had elected to treat the wrongful act or omission as his, and had therefore no recourse against the corporation. (*Murphy* v. *City of Ottawa*, 13 O. R. 331. See *Williams* v. *Bartling*, 29 S. C. R. 548.)

the master personally interfered and was guilty of negligence the Court set aside a nonsuit and sent the case back for trial (*m*).

"A master must furnish adequate materials and resources." As regards the duty of a master to his servant in this respect, the law is thus generalized by Lord Cranworth, in *Paterson* v. *Wallace*, 1 Macqueen 748, 1854, which was the case of a miner who was killed by a large stone, left in the roof of a working, being loose and falling upon him. "Where a master employs a servant in a work of a dangerous character he is bound to take all reasonable precautions for the safety of that workman. It is the master's duty to be careful that his servant is not induced to work under a notion that tackle or machinery is staunch and secure when, in fact, the master knows, or ought to know, that it is not so; and if from any negligence in this respect damage arise, the master is responsible (*mm*) (4).

(*m*) In *Ashworth* v. *Stanwix*, 30 L. J. Q. B. 183, a master was held equally responsible where his partner so interfered.

(*mm*) See also *Weems* v. *Mathieson*, 4 Macqueen 215, where a plaintiff's son was killed by an iron cylinder falling on him through a defective fastening, *Bartonshill Co.* v. *Reid*, 3 Macqueen 266; cases cited in Note (*n*), p. 17; *Roberts* v. *Smith*, 2 H. & N. 213 (*supra*); *Mellors* v. *Shaw*, 30 L. J. Q. B. 333, where a miner was injured through want of sufficient lining of a shaft, and the master superintended; and (*contra*) *Murray* v. *Mevry*, 1890, 17 R. 815, where reasonable fencing only was required; and *Henderson* v. *Carron Co.*, 1889, 16 R. 633, where an iron furnace was dangerous through incrustations.

This duty of the master to the servant equally applies when his servant is coming to or leaving his work, and as to the latter even when he is leaving it for an unlawful purpose, *Brydon* v. *Stewart*, 2 Macqueen 30 H. L. As to his duty to him when doing him a gratuitous service, as driving him in his trap, see *Moffat* v. *Bateman*, L. R. 3 P. C. 115.

So also a master should not use plant for improper purposes. In *Welsh* v. *Moir*, 1885, 12 R. 590, a contractor used a travelling crane to tear up rails with sleepers attached. Owing to the pivot on which it revolved breaking, the crane fell and killed the husband of the pursuer. Held, the crane being put to an improper use, and the contractor not

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Canadian Notes.

(4) *Defect—Knowledge of master.*]—Across the hatchway of defendant's vessel there was a string beam fastened by a cleat for the support of the hatch, and the men in descending the hatch to trim or load the vessel used to swing down it, holding on either by the beam or the combings of the hatch. The plaintiff, engaged as a hand on board, while descending the hatch, rested his whole weight on the beam, and the cleat happening to be loose or out, he was thrown down and injured. There was no proof of knowledge either by defendant or the mas... of the vessel of

A master does not warrant his tackle, &c., as sound, only that he has used due care to ensure they shall be sound, and obtaining

proving the accident was due to a latent defect in the pivot, the defenders were liable. *Volentia* was negatived on the ground he was an ignorant workman who did not appreciate the risk he ran. But in *Bruce* v. *Barclay*, 1890, 17 R. 811, it was otherwise. There a contractor, in breaking up a wreck in a harbour, fixed a rope to the part to be loosened, fastened it to his traction engine, and hauled away. The method had been explained to the men, and approved of by them. An accident happened, but the defendants were held not liable.

Canadian Note (4—*continued.*

any defect or any defective construction or unsoundness of material, nor was it shown when or how the cleat came out. Held, that there was no evidence of negligence in defendant so as to render him liable, and a nonsuit was upheld. (*Jarvis* v. *May*, 26 C. P. 523.)

Servant's knowledge of danger.]—The plaintiff, while employed in removing the cut pieces from a pair of metal-cutting shears worked by steam-power, was struck by a flying piece of metal and severely injured. The machine was perfect of its kind, and it was not shown that the screen or guard could have been used, and the plaintiff was aware that there was danger. The danger when steel was being cut was greater than when iron was being cut. Held, that there should have been some system of giving warning when steel was about to be cut, and that this means of reducing the possible danger not having been adopted, the defendants were liable in damages as at common law. *Choate* v. *Ontario Rolling Mill Company*, 27 A. R. 115. See also *Plant* v. *G. T. R.*, 27 U. C. R. 78, *ante*; *Matthews* v. *Hamilton*, 14 A. R. 260, *ante*; *Fairweather* v. *Owen Sound Stone and Quarry Co.*, 26 O. R. 601, *ante*; *Murphy* v. *City of Ottawa*, 13 O. R. 334, *ante*; *Canada Southern* v. *Jackson*, 17 S. C. R. 316; *Canadian Coloured Cotton Mills* v. *Talbot*, 27 S. C. R. 198; *Roberts* v. *Hawkins*, 29 S. C. R. 218; *Burland* v. *Lee*, 28 S. C. R. 318, *George Matthews* v. *Beachard*, 28 S. C. R. 580; *Citizens* v. *Lepitre*, 29 S. C. R. 1.

In an action by a servant against a master to recover damages for injuries sustained by the plaintiff owing to an accident which occurred by reason of a defect in the machine which he was working, the defect being the giving way of a string which worked a brake automatically, thus saving the necessity of an attendant to work the brake by hand, it appeared that the plaintiff knew of the defect and of the likelihood of an accident, he having frequently replaced the string when worn, and that he worked, and continued to work, the machine without help from any other person and without complaint. Held, that the plaintiff was *volens* and could not recover at common law. (*Bell* v. *Howell*, 27 O. R. 619, and *post*, p. 20.)

In an action by a servant for an injury sustained in consequence of the guard being out of place in working a circular saw which he had to attend, it was held that it was not sufficient to show that the master knew the saw was not guarded, but it must also appear that the servant was ignorant of that fact, and as the servant was skilled in the use of the saw and did not look to see whether the guard was on or off, as it was his duty to have done, he could not, therefore, make the master responsible to him for the consequences of his own neglect of duty. *Mc*[illegible] v. *Reed*, 19 O. R. 198.

The plaintiff having had years of experience in running ironwork machines, and having been previously employed by the defendants in their wood-working manu-

them from competent makers is strong evidence of his having used such care (*n*). To make him responsible, the statement of claim

(*n*) *Priestly* v. *Fowler*, 3 M. & W. 1, 1837. In *Ormond* v. *Holland*, E. B. & E. 102, the plaintiff, a workman for some builders, was injured through a defective ladder breaking. Erle, J.: "The defendants have shown they took due care. The question of law therefore is, whether a master warrants the soundness of the materials; and he does not." In *Potts* v. *Plunkett*, 9 Ir. C. L. R. 290, a plaintiff was injured by a flagstone which he had to stand upon breaking. Held, defendants not liable. In *Brown* v. *Accrington Spinning Co.*, 34 L. J. Ex. 208, a plaintiff could not recover because a mill fell through insufficient pillars, the defendants having used reasonable care. In *Potts* v. *Port Carlisle Dock and Rly. Co.*, 2 L. T. 283, a turntable gave way through being defective and killed plaintiff's husband. Cockburn, C.J.: "To sustain this action it is necessary to show not only that the turntable is defective, but that the defendants had been guilty of negligence in this—they had not used due care in employing competent persons to do the work." In *Seymour* v. *Maddox*, 20 L. J. Q. B. 327, an actor who fell through an unfenced hole in a floor he had to pass on going to the stage could not recover; and in *Searle* v. *Lindsay*, 31 L. J. C. P. 106, where a plaintiff was injured through a winch handle coming off owing to the negligence of the chief engineer in not properly securing it, he could not recover.

Equally a shipowner does not warrant his ship is seaworthy, *Couch* v. *Steel*, 23 L. J. Q. B. 121, but he must use all reasonable care to ensure its being so, 39 & 40 Vict. c. 80, s. 5.

Canadian Note (4)—*continued.*

factory, hired a second time, and was injured in working a jointer which he was told other men had been injured at. In an action against the employers: Held, that plaintiff knew from his own inspection and experience that the machine was dangerous, that it needed caution and firmness in operating, that the risks were open to his observation, and that his opportunities and means of judging of the danger were at least as good as those of his employers, and a motion to set aside a non-suit was dismissed. (*Rudd* v. *Bell*, 13 O. R. 47, *ante*, p. 3.

The plaintiff, a boy of twelve, in the employment of the defendant, was left with two other boys to attend to a flax-scutching machine. He had never attended to the machinery before, and he said he had received no instructions. The two boys were sent away, and the plaintiff in attempting to replace a roller which frequently came out of its place had his arm crushed in some cog-wheels which were not covered. These wheels were on the opposite side of the machine from where the plaintiff was required to work, and the roller could readily have been replaced without going near them. The plaintiff further said that he put the roller in as he had seen the boys do it, and that he had not been warned not to go near the cog-wheels. The defendant's evidence, on the other hand, showed that the plaintiff had been distinctly warned that the other boys had not placed the roller in as plaintiff did, and that the plaintiff had been shown how to put it in. It also appeared that the machine had been in use several years without an accident, although boys had constantly been employed about it. Held, that there was evidence to go to the jury, and a non-suit was set aside. (*Cleary* v. *Keith*, 34 U. C. R. 212.)

must allege that he knew, or ought to have known, of the defect, and that the servant did not (*o*) (5). Perhaps this view of the law is rather too broad now, having regard to recent decisions, and the doctrine of knowledge has been somewhat modified or explained by *Smith* v. *Baker*, (1891) A. C. 325, followed by *Williams* v. *Birmingham Battery Co.*, (1899) 2 Q. B. 338. Here a workman employed on a tramway had no proper means provided by which to descend. Owing to this, on trying to do so he was killed. The Court of Appeal found for the plaintiff, holding there was all the difference between employers not finding proper appliances in the first instance, and their doing so and such then becoming defective (*p*).

So, also, a master is not responsible for latent defects (*q*), but it is his duty to test for those which may arise in the course of wear (*r*). This is not a personal duty cast upon him, and if he

In *Thomson* v. *Dick*, 1892, 19 R. 804, the husband of the pursuer was engaged in pulling down an old building, and was killed by the fall of a scaffold erected by himself and two other experienced men. Held, defenders not liable.

(*o*) *Griffiths* v. *London & St. Katharine Dock Co.*, 13 Q. B. D. 259; *Watling* v. *Oastler*, 40 L. J. Ex. 43. The ignorance of the servant may be inferred from the statement of claim, but it must be inferred. Also *Ogden* v. *Rummens*, 3 F. & F. 751; and *Paterson* v. *Wallace* (*supra*).

(*p*) The following were the questions left to the jury, with their answers:—Did the defendants exercise due care to leave the tramway in a safe condition so as to protect their servants working upon it against unnecessary risk? No. Was it dangerous to descend from the tramway without the means of a ladder? Yes. Had the deceased the same means of knowing that this was dangerous as the defendants had? Yes. Did the deceased know it was dangerous? Yes. Was he guilty of contributory negligence? No. To have entitled the defendants to judgment the jury ought to have been asked—Did the deceased contract to take the risk? See also *Pyner* v. *Bullard*, 14 T. L. R. 57.

(*q*) In *Redhead* v. *M. R.*, L. R. 4 Q. B. 379, a passenger was injured through a wheel breaking through a latent defect. Railway held not liable; see also *Richardson* v. *G. E. R.*, 1 C. P. D. 342.

(*r*) In *Murphy* v. *Phillips*, 35 L. T. 477, a stevedore was injured by a chain breaking owing to a link which was partly worn and partly defective. As there were means of testing, and the master had neglected to use them, he was held liable. And the tests should be applied even if not absolutely infallible, *Manser* v. *E. C. R.*, 3 L. T. 585. So in *Webb* v. *Rennie*, 4 F. & F. 608, where a scaffold pole was left in the ground for two years and became rotten and broke, and had never been examined. Held, defendants liable. As to what was held adequate examination, see *Richardson* v. *G. E. R. Co.*, 1 C. P. D. 342. In

Canadian Note.

(5) See case under "*Servant's knowledge of danger*," *ante*, p. 16.

delegate it to a competent person or servant, that will exonerate him even if such person or servant neglect to do so (*s*). Nor is a master bound to adopt the most recent invention or improvements, or provide extraordinary precautions against men's rashness (*t*), but it is his duty to provide guards proper to the machinery (*u*), and to warn his workpeople against all hidden dangers (*x*); and if he does not, he is liable. So also as a matter of defence a master can say the servant knew of what was wrong as well and completely as himself, but this opens up a large subject, and will be dealt with in the chapter on the Defences open to Masters.

Hanrahan v. *Ardnamult S. S. Co.*, 22 L. R. Ir. 55, the plaintiff failed though no examination was made; and see also *Gavin* v. *Rogers*, 1889, 17 R. 206.

(*s*) *Robbins* v. *Cubbitt*, 46 L. T. 535; *Dynen* v. *Leach*, 26 L. J. Ex. 221; *Rilley* v. *Baxendale*, 30 L. J. Ex. 87. Similarly complaints made to a foreman and not attended to will not make a master responsible: *Hall* v. *Johnson*, 222; *Wigmore* v. *Jay*, 19 L. J. Ex. 300, and see page 109.

(*t* *Paterson* v. *Wallace* (*supra*).

(*u*) *Weems* v. *Mathieson*, 4 Macqueen, 215.

(*x*) See note, p. 2 (*supra*). A workman does not contract to take concealed risks, and may therefore sue either in contract for breach of it or in *tort* for breach of duty.

Canadian Notes.

Evidence of experts as to defect.]—Where a workman was killed by the explosion of a tank in which refuse was being boiled into soap, and there was no direct evidence as to the cause of the explosion, evidence of experts who had examined the tank, stating that the screw fastening the tank cover was defective and that the explosion was probably due to this cause, was held sufficient to justify the submission of the case to the jury. (*Badcock* v. *Freeman*, 21 A. R. 633; and see *Badgerow* v. *Grand Trunk R. W. Co.*, 19 O. R. 191, *post*.)

Defect in way—Set of cogs.]—Action by a workman in the defendants' mill for damages for injuries received while passing over a set of cogs, left uncovered, upon which he slipped, and his leg was dragged in by the cogs before they could be stopped. The jury found that there were other passage ways besides the cogs for the plaintiff to use in fulfilling his duties, but that none of them was sufficient, and the way used was more expeditious; that the non-covering of the cogs made the "way" defective; and that the plaintiff was not unduly negligent. The trial judge, however, dismissed the action upon the ground that the plaintiff voluntarily incurred the risk. His decision was reversed by the Supreme Court of British Columbia, and a verdict ordered to be entered for the plaintiff with damages as assessed by the jury. The Supreme Court of Canada allowed an appeal by the defendants and ordered a new trial, being of opinion that it was not sufficiently established that the plaintiff had of necessity (reasonable and practical necessity) to pass over a set of cogs which, being uncovered, were in a dangerous and defective state, as alleged in the statement of claim. (*British Columbia Mills Co.* v. *Scott*, 21 S. C. R. 702; and *post*, p. 40.)

On the same principle as that just stated, requiring a master to provide adequate materials and resources, it is the duty of a master to his servant to use reasonable care in the selection of competent workmen as his fellow-servants. If he does not use such care, he will be answerable for their incompetence, but the mere fact of their being incompetent or negligent will be no proof he did not use such care (*y*). In every case the plaintiff will have to prove as a substantive fact that he failed to use such care (*z*). But according to *Skerrit* v. *Scallan*, Ir. R. 11 C. L. 389, he makes a *primâ facie* case when he shows that a servant was incompetent, and that the injury he sustained was the result of that incompetency, which throws the onus on the master of proving that he exercised due care in selecting him. The duty of using care in selecting competent servants is a continuing one, and a master must not continue to employ a servant who has become incompetent to his knowledge (*a*). The duty of selecting his servants with care is not a personal one, and where incompetent servants have been selected by a competent foreman the master will not be liable (*b*). We must make a similar remark to that just made in reference to defective plant, &c., namely, that knowledge by the servant of the incompetence of his fellow-servants may afford a defence to the master (*c*). (See chapter on Defences open to Masters, *infra*.)

(*y*) *Tarrant* v. *Webb*, 25 L. J. C. P. 261, 1856; *Byrne* v. *Fennell*, 10 L. R. Ir. 397; *Cribb* v. *Kynoch*, May 15, 1907, not yet reported.

A high degree of care is needed in selecting a superintendent, *Wabash R. C.* v. *MacDaniels*, 107 U. S. 454, and it is no evidence of incompetence that a man has been promoted from a lower grade, *Edwards* v. *Brighton*, 4 F. & F. 531.

(*z*) *Murphy* v. *Pollock*, 15 Ir. C. L. R. 224; *Allen* v. *New Gas Co.*, 1 Ex. D. 251.

(*a*) *Senior* v. *Ward*, 28 L. J. Q. B. 139.

(*b*) *Smith* v. *Howard*, 22 L. T. 130.

(*c*) *Senior* v. *Ward* (*supra*), also *M'Ternan* v. *White* (1890), 17 R. 368, where a fellow-workman was drunk, as both he and his master knew; but the jury must consider all the facts, *Hoey* v. *Dublin R. C.*, 5 Ir. R. C. L. 206.

Canadian Notes.

A negligent system or a negligent mode of using perfectly sound machinery may make the employer liable apart from the provisions of the Employers' Liability Act. The employer may be made liable who is blameworthy in respect of not having provided proper machinery and appliances for the work. (*Fairweather* v. *Owen Sound Stone and Quarry Co.*, *ante*, p. 16; *Patton* v. *The Alberta Railway Company*, 2 N. W. T. Reps. 438.)

A further duty of a master is to conduct his business on a proper system and with due and reasonable care for the safety of his servants, and judging from the remarks of Lord Cranworth in the case of *Sword* v. *Cameron*, 1839, 1 D. 439 (*d*), it would appear this is a duty cast upon him whether he personally attend to his business or otherwise. In fact, if he attend personally to his business, a defective system will be evidence of personal negligence for which, as we have seen, he is always responsible. In this case the plaintiff was a workman for a quarry owner where a considerable amount of blasting was done. Time fuses were used which in many cases did not give sufficient time to the workmen to get into safety, and it was not an infrequent occurrence for stones to fly over the retreating men. On one such occasion the plaintiff was struck by a large block, and on bringing his action recovered against his master. In commenting on this case, Lord Cranworth said: "This case may be justified without resorting to any such doctrine as that a master is responsible for injuries to a workman in his employ occasioned by the negligence of a fellow-workman engaged in common work. The injury was evidently a result of a defective system not adequately protecting the workmen at the time of the explosion. The accident occurred not from any neglect of the man who fired the shot, but because the system was one which did not enable the workmen at the crane to protect themselves by getting into a place of safety" (*e*).

(*d*) Referred to by Lord Cranworth in the case of *Bartonshill Co.* v. *Reid* (*supra*).

(*e*) This case was followed in *McGuire* v. *Cairns*, 1890, 17 R. 540. The defenders were ironfounders. They used to break up old iron by letting a heavy iron ball fall on it from a height. They had done so for twenty-four years. Before letting the ball fall the man in charge shouted, but he did not wait to see that his shout was attended to.

Canadian Notes.

Defective system, notice to master of.]—A master is responsible to his workmen for personal injuries occasioned by a defective system of using machinery, as well as for injuries caused by a defect in the machinery itself. At common law a workman was not precluded from obtaining compensation for injuries received by reason of defective machinery, or a defective system of using the same, by reason of his failure to give notice to the employer of such defect. (*Webster* v. *Foley*, 21 S. C. R. 580.)

This doctrine was approved in the House of Lords by Lord Halsbury, who in *Smith* v. *Baker* (1891) Ap. Cas., p. 339, said: "I think the cases cited at your Lordships' bar of *Sword* v. *Cameron* (*supra*) and the *Bartonshill Coal Co.* v. *McGuire* (3 Macqueen, 300) established conclusively the point for which they were cited, that a negligent system or a negligent mode of using perfectly sound machinery may make the employer liable quite apart from any of the provisions of the Employers' Liability Act."

The defence "knowledge of servant," of course, equally applies here as in the previous case: see Chapter III. *infra*.

Again, in a number of cases a statutory duty as to fencing workshops, &c., is imposed on a master (*f*). In such cases, when a servant suffers injuries through a breach of such duty, it is often a nice point to determine whether he is entitled to full damages for the injury he has sustained, or whether the master is only liable to the penalty prescribed by the statute.

In the Irish case of *Norton* v. *Kearon*, Ir. R. 6 C. L. 126, 1876,

On the occasion in question, the pursuer was struck by a fragment and injured. He was thirty yards off, and did not hear the shout. Held, system defective and defenders liable.

In *Mulligan* v. *M'Alpine*, 1888, 15 R. 789, it was proved that in blasting rock the practice was to take powder in small barrels of 25ll to the work, and then take out what was required. A spark having exploded the remainder in the barrel, it was sought to make the defenders liable for a defective system, but without success: see also *Murdoch* v. *Mackinnon*, 1885, 12 R. 810; *M'Inally* v. *King's Trustees* (1886), 14 R. 8.

So in *Carny* v. *Caledonian R. C.*, 1889, 16 R. 618, where a man was working on a siding, which was one of many, covering a breadth of several hundred yards, and was killed by an engine running into him. The driver, who was watching a signal, did not see him till too late, for when he did he could not stop in time, and the man never heard his whistling as so much was going on. Held, the railway company ought to have taken precautions to have avoided such accidents, and were therefore liable.

The case of *Murdoch* v. *Mackinnon* (1885), 12 R. 810, was to the same effect. A miner had to run his hutch on to a cage from a seam about eight yards from the top. The shaft went deeper; owing to mistaking a signal which was given by word of mouth, he ran his hutch forward when the cage was not there, fell down the shaft and was killed. Defenders held liable, as there was no bottomer to superintend the placing the hutches on the cage, and a safer working of signals was reasonably necessary; but see *Elliot* v. *Tempest*, 5 T. L. R. 154.

(*f*) This may be directly by statute or indirectly by by-laws authorised or required by statute.

it was the statutory duty of the defendants, when discharging their ships, to protect the gangway by a handrail. They failed to do so, and for want of it the plaintiff fell and was injured. It was held he had no right of action against the defendants at common law, and that for the breach of a duty imposed by statute his only remedy was that specifically provided by statute *g*).

Is this case inconsistent with those that follow, or a correct statement of the law?

As early as 1853 the distinction was recognised between rights under statute and rights at common law. In *Couch v. Steel*, 23 L. J. Q. B. 121, a sailor sued his employers for breach a statutory duty in not having provided proper lifebuoys on board ship, where he had suffered damage.

Here the Court held that the penalty provided was for breach of the public duty, but the private insation to a person in case of a breach of the unchanged. This opinion Coleridge, who in delivering judgment in v. *H* 5 E. B. 849, said: "The statute makes the commission of a certain act illegal, and subjects the parties committing to penalties. But there can be no doubt a party receiving bodily injury through such omission has the right of suing at common law. The action, however, must be subject to the rules of common law, and one of these is that want of ordinary care or wilful misconduct on the part of the plaintiff is an answer to the action." So *Platt*, 7 Ex. 460, in course

g) In the recent Scotch case of *Ogg* v. *Shaw*, 30 S. L. R. 758, the breach of statutory rules was held to be fault which *prima facie* implies the pursuer to recover, the Court refused to accept the view that under liability was limited to the amount of the penalty. *Gray* v. *Thomson* 1892, 17 R. 200, where the defenders had provided both fog-horn and light for their ships in harbour during fog, but the latter had any large openings. They had done both, when a man gone off for some coffee, and through his absence the light went out. Held, no breach of bye-laws on part of defenders, for which they were liable.

See *Thomas* v. *Ragg*, 7 Ex. D. 269, where, as to mines, it was held that specific remedy for enforcing rules of working did not exclude that of action for breach.

Atkinson v. *Newcastle, &c. Waterworks Co.*, 2 Ex. D. 441, should be considered. The defendants did not keep their water at the required pressure. A fire took place and the plaintiff suffered more serious damage in consequence. Held, they were not liable beyond the penalty.

of judgment, Parke, B., said: "There is a positive enactment that in all factories within the interpretation clause when any part of the machinery is used for any manufacturing process it shall be securely fenced, consequently if any person sustain an injury through the violation of this enactment he has a right to bring an action."

Again, according to Lord Bramwell, one of our very great judges, a plaintiff suing for failure of employer to obey requirements of statute is better off than when suing at common law. In *Britton* v. *G. W. Cotton Co*, L. R. 7 Ex. 130, a workman was killed by an unfenced flywheel, its being unfenced being a breach of 7 & 8 Vict. c. 15, s. 21. In delivering judgment Bramwell, B., said: "Here the plaintiff is not placed in the dilemma which arises when the action is for breach of duty at common law. That dilemma is this, either the danger was obvious or it was not. If obvious, the servant must have known it as well as the employer, if it was not obvious, there was no negligence in the employer. That dilemma is not in the plaintiff's way here, for the duty is a statutory one." Taking this view of the law in *Baddeley* v. *Granville*, 19 Q. B. D. 423, Mr. Justice Wills held a breach of statutory obligation evidence of negligence (*h*); and more, that where there was a breach of such obligation the maxim *Injuria non fit volenti* did not apply, and knowledge of the servant was not a defence, and further he expressed his opinion that even an express contract by a servant with his master not to hold him liable for a breach of statutory requirements would be void as against public policy. However, as *Britton* v. *G. W. Cotton Co.* has been followed by the recent case of *Groves* and *Wimborne*, (1898) 2 Q. B. 402, we may take it that breach of statutory duties, at any rate in regard to matters the subject of this work, will subject the employer to the same liabilities as any other act of actionable negligence.

(*h*) See also *Blamires* v. *L. & Y. R.*, L. R. 8 Ex. 283, where the failure to adopt precautions approved by the Legislature was held evidence of negligence. As to the weight and extent of such evidence see *Gorris* v. *Scott*, L. R. 9 Ex. 125.

BOOK THE SECOND.

THE

LIABILITY OF EMPLOYERS

UNDER THE

EMPLOYERS' LIABILITY ACT, 1880.

43 & 44 Vict. c. 42.

CHAPTER II.

THE ACT IN DETAIL.

AN ACT to extend and regulate the liability of employers to make compensation for personal injuries suffered by workmen in their service. (7th Sept., 1880.)

Be it enacted by the Queen's most excellent Majesty

Canadian Notes.

An Act to secure Compensation to Workmen in certain Cases.

(R. S. O. 1897, c. 160.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be known and cited as "The Workmen's Compensation for Injuries Act."

2. Where the following words occur in this Act, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:—

1. "Superintendence" shall be construed as meaning such general superintendence over workmen as is exercised by a foreman, or person in a like position to a foreman, whether the person exercising superintendence is or is not ordinarily engaged in manual labour.

2. "Employer" shall include a body of persons corporate or unincorporate, and

by and with the advice and consent of the Lords spiritual and temporal and Commons in this present Parliament assembled and by the authority of the same as follows:

Amendment of law.

Section 1.—Where after the commencement of this Act personal injury is caused to a workman (*a*)

(1.) By reason of any defect in the condition of the

(*a*) See cases in sect. 8, p. 76 (*infra*), as to who are workmen, &c.

Canadian Notes.

Workmen's Compensation for Injuries Act, sect. 2.

also the legal personal representatives of a deceased employer, and the person liable to pay compensation under sect. 4 of this Act.

3. "Workman" does not include a domestic or menial servant or servant in husbandry, gardening, or fruit-growing, where the personal injury caused to any such servant has been occasioned by or has arisen from, or in the usual course of his work or employment as a domestic or menial servant, or as a servant in husbandry, gardening, or fruit-growing, but, save as aforesaid, means any railway servant, and any person who, being a labourer, servant, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract is made before or after the passing of this Act, is expressed or implied, oral or in writing, and is a contract of service or a contract personally to execute any work or labour.

4. "Packing" shall mean a packing of wood or metal, or some other equally substantial and solid material, of not less than two inches in thickness, and which, where filled in, shall extend to within one and a half inches of the crown of the rails in use on any railway, shall be neatly fitted so as to come against the web of such rails, and shall be well and solidly fastened to the ties on which such rails are laid.

5. "Railway servant" shall mean and include a railway servant, tramway servant and street railway servant.

Sect. 3.

When workman to have claim against employer.

3. Where personal injury is caused to a workman—

1. By reason of any defect in the condition or arrangement of the ways, works, machinery, plant, building, or premises connected with, intended for, or used in the business of the employer; or

2. By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or

3. By reason of the negligence of any person in the service of the employer to whose order or directions the workman at the time of the injury was bound to conform, and did conform, when such injury resulted from his having so conformed; or

4. By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by the employer or by any person delegated with the authority of the employer in that behalf; or

5. By reason of the negligence of any person in the service of the employer who

ways, works, machinery, or plant connected with or used in the business of the employer; or

Canadian Notes.

has the charge or control of any points, signal, locomotive, engine, machine, or train upon a railway, tramway, or street railway; Workmen's Compensation for Injuries Act

the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer, as if the workman had not been a workman of, nor in the service of, the employer, nor engaged in his work.

4.—(1.) When the execution of any work is being carried into effect under any contract, and Sect. 4.

(a) The person for whom the work, or any part thereof, is done, owns or supplies any ways, works, machinery, plant, buildings, or premises used for the purpose of executing the work; and Employer, who to be deemed.

(b) By reason of any defect in the condition or arrangement of such ways, works, machinery, plant, buildings or premises, personal injury is caused to any workman employed by the contractor or by any sub-contractor; and

(c) The defect, or the failure to discover or remedy the defect, arose from the negligence of the person for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duty of seeing that such condition or arrangement is proper;

the person for whom the work or that part of the work is done shall be liable to pay compensation for the injury as if the workman had been employed by him, and for that purpose shall be deemed to be the employer of the workman within the meaning of this Act. Provided always, that any such contractor or sub-contractor shall be liable to pay compensation for the injury as if this section had not been enacted, so, however, that double compensation shall not be recoverable for the same injury.

(2.) Nothing in this section contained shall affect any rights or liabilities of the person for whom the work is done and the contractor and sub-contractor (if any) as between themselves.

5. Where within this Province personal injury is caused to a workman employed on or about any railway— Sect. 5. Injuries by railways.

1. By reason of the lower beams or members of the superstructure of any highway, or other overhead bridge, or any other erection or structure over said railway, not being of a sufficient height from the surface of the rails to admit of an open and clear headway of at least seven feet between the top of the highest freight cars then running on such railway and the bottom of such lower beams or members; or

2. By reason of the space between the rails in any railway frog, extending from the point of such frog backward to where the heads of such rails are not less than five inches apart, not being filled in with packing; or

3. By reason of the space between any wing-rail and any railway frog, and between any guard-rail and any other rail fixed and used alongside thereof as aforesaid, and [illegible] all wing-rails, where no other rail intervenes save only where the [illegible] between the heads of any such wing-rail and railway frog as aforesaid, and between the heads of any such guard-rail and any other rail fixed and used alongside thereof as aforesaid, or between the heads of any such wing-rails where no other rail intervenes as aforesaid, is either less than one and three-quarters of an inch or more than five inches

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(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform where such injury resulted from his having so conformed; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway;

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any person entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

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in width, not being at all times during every month of April, May, June, July, August, September, October and November filled in with packing, such injury shall be deemed and taken to have been caused by reason of a defect within the meaning of clause numbered 1 of sect. 3 of this Act, but nothing in this section contained shall be taken or construed, as in any respect, or for any purpose restricting the meaning of the said clause.

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6. A workman or his legal representatives, or any person entitled in case of his death, shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say:

1. Under clause 1 of sect. 3, unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person entrusted by him with the duty of seeing that the

Section 2.—A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases; that is to say,

(1.) Under sub-sect. 1 of sect. 1, unless the defect therein mentioned arose from, or had not been

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condition or arrangement of the ways, works, machinery, plant, buildings, or premises are proper.

2. Under clause 1 of sect. 3, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned: provided, that where a rule or bye-law has been approved, or has been accepted as a proper rule or bye-law, either by the Lieutenant-Governor in Council or under and pursuant to any provision in that behalf of any Act of the Legislature of Ontario, or of the Parliament of Canada, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

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(a) Cause of Accident Apparent.

Buffers on street railway cars.]—Car buffers of different heights so arranged that in coupling, the buffers overlap and afford no protection to the person effecting the coupling is a "defect in the arrangement of the plant" within the meaning of the Workmen's Compensation for Injuries Act, s. 3. (*Boal* v. *Toronto R. W. Co.*, 22 A. R. 78; affirmed, *Toronto R. W. Co.* v. *Boal*, 24 S. C. R. 715.)

Cases decided under sects. 1—6, sub-sect. 2.

Escape pipe—Safety valve—Damages—Infant.]—The infant plaintiff, who was employed in a canning factory, was injured by the explosion of a retort or boiler in which vegetables were being cooked. The cooking was done by steam which was forced through the boiler, there being an intake pipe and an escape pipe which had to be adjusted by hand and no safety valve or automatic escape pipe. There was no evidence of the cause of the explosion, and the defendants contended that it was due to a latent defect in the boiler. Held, that it might properly be inferred that the explosion was caused either by the negligence of the person whose duty it was to adjust the escape pipe or by the absence of the safety valve, and that in either view the defendants were liable. Held also, that the mother of the infant could not recover for her services in attending upon him during his illness and for moneys expended and liabilities incurred by her for medical attendance, nursing and supplies, she not being in the legal relationship of master to him, or under legal liability to maintain him. *Wilson* v. *Boulter*, 26 A. R. 181.)

The motorman of a car running on an electric system is a "person who has the charge or control" thereof within the meaning of sub-sect. 5 of sect. 3 of the Workmen's Compensation for Injuries Act R. S. O. 1897, c. 160), and his employers are liable in damages to a fellow-servant for injuries sustained while in discharge of his duty, owing to the motorman's negligence in passing too close to a waggon which is moving out of the way of the car. (*Snell* v. *Toronto R. W. Co.*, 27 A. R. 151.)

As to what constitutes a person to whose orders workman bound to conform.] See *Ferguson* v. *Galt Public School Board*, 27 A. R. 480; and *Shea* v. *Inglis*, *post*, p. 110.

In order to succeed in an action under the common law, or under the Workmen's Compensation for Injuries Act, the plaintiff must prove that the accident was due to the negligence of the person in charge who was a superintendent within the meaning of sect. 3, sub-sect. 2, or that such person was so unskilled as to lay the defendant open to the charge of negligence in employing him in such duty.

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discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of

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The plaintiff was employed as a dressmaker in the defendants' departmental store, and, while descending in their elevator after her day's work was done, was injured by the fall of the elevator. Apart from a question as to the defective condition or arrangement of the safety appliances in connection with the elevator, the cause of the fall was the failure of the person in charge to properly manage the elevator and to use the brake for the purpose of controlling, and which, but for that failure, would have controlled, its movements. Held, that the defendants were not answerable at common law for such neglect which was that of the plaintiff's fellow-servant, nor under the Workmen's Compensation for Injuries Act (R. S. O. 1897, c. 160), for the fellow-servant was not a person having any superintendence entrusted to him within sects. 2 (1) and 3 (2). *Carnahan* v. *Robert Simpson & Co.*, 32 O. R. 328.)

Superintendence—Negligence of person to whose orders workman bound to conform—Custom of business.]—The plaintiff was injured in using a derrick in connection with the construction by the defendants of a building. It appeared that the custom or manner of conducting the work was that the oldest man working on the derrick was understood to be in charge of it, and A., being such oldest man, and having been ordered by the foreman of the stone branch so to lift a stone which had, by the foreman's orders, been prepared in a particular way for lifting with "dogs," directed the plaintiff to assist in lifting the stone with the "dogs," instead of having it wrapped in chains, as would have been proper, and the stone fell and injured the plaintiff: Held, reversing the decision of the Court below, that under sect. 3, sub-sect. 3, no implied right of superintendence within the meaning of sect. 2 (1) of the Workmen's Compensation Act arises merely from length of service or skill, and the employer is not liable where one workman, presuming on greater length of service or skill, directs his fellow-workman to do certain work in an unsafe manner, and injury results. (*Garland* v. *City of Toronto*, 23 A. R. 238; 27 O. R. 154; and *post*, p. 51.

(b) Cause of Accidents not apparent.

B., the plaintiff's son, was employed as fireman on a locomotive engine which was in charge of a driver named R., B. being under his orders. B. was severely scalded by the bursting of the boiler, from which death resulted. The accident was apparently caused by the sudden influx of cold water into the boiler, which had been allowed to run too low. There was no evidence to show to whom the negligence was attributable, but it was proved that, though the company held the driver responsible as regards the engine, it was the duty of the fireman, for which he also was responsible to the company, to attend to the supply of water, which was part of his education to fit him for the superior position of driver, and that from his position he had greater facilities for opening the valve than those possessed by the driver. From a report of one of the defendants' officials it appeared that B. had charge of the water at the time of the accident. In an action against defendants for damages under the Workmen's Compensation for Injuries Act, s. 3, sub-s. 3:—Held, that the defendants were not liable. (*Brunell* v. *Canadian Pacific R. W. Co.*, 15 O. R. 375; and see *Gunn* v. *Le Roi*, 10 B. C. R. 59.)

(c) Plant, Defects in.

Brake on railway car—Contributory negligence.]—In an action by plaintiff to recover damages for the death of her husband by reason of, as was alleged, a defective

seeing that the ways, works, machinery, or plant were in proper condition. Sect. 2

(2.) Under sub-sect. 4 of sect. 1, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's principal Secretaries of State, or by the Board of Trade or any other department of the Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3.) In any case where the workman knew of the

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brake on a car on defendants' railway on which deceased was employed as a brakesman, it was held that there could be no recovery, for the evidence failed to show how the accident happened. The contention that it was the defective brake was mere conjecture; and, even had it been the cause, it would have been no ground of liability, for under the defendants' rules it was the deceased's duty to examine and see that the brakes were in proper working order and report any defect to the conductor. If the plaintiff made the examination, he apparently discovered no defect as he made no report, a latent defect being no evidence of a negligence, and if he omitted to make such examination, &c., then the accident would be attributable to his own negligence. (*Badgerow* v. *Grand Trunk Rly. Co.*, 19 O. R. 191. Workmen's Compensation for Injuries Act.

3. In any case where the workman knew of the defect or negligence which caused his injury, and failed without reasonable excuse to give or cause to be given within a reasonable time information thereof to the employer or some person superior to himself in the service of his employer, unless he was aware that the employer or such superior already knew of the said defect or negligence. Provided, however, that such workman shall not, by reason only of his continuing in the employment of the employer, with knowledge of the defect, negligence, act or omission, which caused his injury, be deemed to have voluntarily incurred the risk of the injury. Sect. 6, sub-sect. 3.

Master's Knowledge.]—Where the workman is aware that the employer knows of the defect that ultimately causes the injury he is not bound under sub-sect. 3 of sect. 6 of the Workmen's Compensation for Injuries Act to give information thereof to the employer, and his failure to give information in other cases will not bar his right of action if a reasonable excuse is shown for the omission, this being a question of fact for the jury. Where both the employer and the workman know of the defect, and it is the workman's own duty to see that the defect is remedied, but orders given by him with that object are not carried out, he cannot recover. (*Truman* v. *Rudolph*, 22 A. R. 250.) Note to sub-sect. 3.

The provisions of sub-sects. 2 and 3 of sect. 5 are not binding upon railways under the legislative control of the Dominion. (*Washington* v. *G. T. Rly. Co.*, 24 D. A. R. 183; 28 S. C. R. 184; (1899 A. C. 275.)

The plaintiff must have a reasonable expectation of benefit from the continuance of the life of the deceased. (*Mason* v. *Bertram*, 18 O. R. 1.)

Employers' Liability Act, sect. 2, sub-sect. 3.

defect or negligence which caused his injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

The effect of the above sect. 1, as qualified by sect. 2, is in the cases to which it applies to negative the doctrine of common employment before discussed, and the implied contract on the part of the servant to take the known risks of the employment. It has been held, *Griffiths* v. *Dudley (Earl of)*, 9 Q. B. D. 357, that it does not apply to express contracts, and that it is neither contrary to the Act nor against public policy for a workman to contract himself out of the benefit of the Act. Such contracts need not be in writing, and may be gathered from notices, &c. posted about the buildings, provided they have been brought to the workmen's knowledge before engagement, *Carus* v. *Eastwood*, 32 L. T. N. S. 855. If a workman so contracts himself out of the Act his representatives, in case of his death, will be equally bound, *Griffiths* v. *Dudley* (*supra*). If the workman be an infant there will be the further question, Was such contract for his benefit? *Clements* v. *L. & N. W. Rly.*, (1894) 2 Q. B. 482.

In order to recover under this section a plaintiff must prove (1) that the relationship of master and servant existed, that he was injured in the service (*a*), and that he has given the notice required by the Act. (2) The defect, negligence (*b*), act, or omission which was the cause of his injury. (3) And in case of a defect, that the defect was due to the negligence of the employer or of someone for whom the employer was responsible (*c*). At first sight it would

(*a*) *Nicholson* v. *Macandrew*, 1888, 15 R. 851; *Hanrahan* v. *Limerick S. S. Co.*, 18 L. R. Ir. 135.

(*b*) Such defects, &c. will, of course, be questions of fact, and what have been held defects, &c. and what have not, will be best gathered from the cases following.

(*c*) What is actionable negligence is a very large subject indeed. The following are a few of the most important principles relating to it.

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Note to sect. 2, sub-sect. 3. The question of who is or is not a servant in husbandry is one for the jury. *Reid* v. *Lamie*, 25 O. R. 223.

seem that he would have to prove a fourth fact as a condition precedent to recovering, namely, that he did not know of the defect,

In the first place negligence is never absolute, only relative, *Degg* v. *M. R.*, 26 L. J. Ex. 171; *Wilson* v. *Merry*, L. R. 1 H. L. Sc. 326; and is only actionable so far as it involves a breach of duty to one to whom a duty is owed, *Heaven* v. *Pender*, 11 Q. B. D. 503. The best definition of it seems to be that given by Brett, M.R., in the same case at p. 507: "Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill, by which neglect the plaintiff, without contributory negligence on his part, has suffered injury to his person or property."

The highest duty one owes is to a person coming on one's premises by invitation on lawful business, *Indermaur* v. *Dames*, L. R. 2 C. P. 311. In this case the plaintiff was the servant of an engineer employed by sugar refiners to improve their gas arrangements. Coming to do his work he fell down an unfenced shaft. He was injured, and was held entitled to damages. It is in this position a servant under the Act is considered to be if injured when about his master's business, *Thomas* v. *Quartermaine*, 18 Q. B. D. 685. A licensee, *e.g.*, a guest, has only a right to be protected from traps or latent defects, see Lord Bramwell in *Swainson* v. *N. E. Rly.*, 3 Ex. D. 341, and a trespasser, as a rule, has no rights at all. But even a trespasser may recover in case of an unfenced quarry or unprotected hole near a highway. *Marley* v. *Grove*, 46 J. P. 360. *Langridge* v. *Levy*, 4 M. & W. 337, is an illustration where a duty may be owed indirectly. The plaintiff used a gun bought from the defendant by his father. It burst and blew his hand off. The defendant had warranted it sound, but the warranty was false to his knowledge. Held, he was liable. But in *Longmeid* v. *Holliday*, 6 Ex. 761, a tradesman honestly warranted a lamp as sound which was not. No action was held maintainable by a party not privy to the sale, although it was contemplated it would be used by such party; not in contract because the plaintiff was no party to it, nor in *tor.* because the defendant believed what he said.

An accident gives no cause of action if caused by another in the prosecution of a lawful act, though otherwise if unlawful, *Davis* v. *Sanders*, 2 Chit. 639. The mere happening of an accident is not evidence of negligence, and some substantive evidence of negligence must be given by the plaintiff, *Hammack* v. *White*, 31 L. J. C. P. 129, unless the mere happening of an accident is itself of such a nature that negligence may be presumed, as when a sack of flour fell from a warehouse on a passer-by, it not being in the nature of such goods to so fall without some negligence, *Byrne* v. *Boadle*, 33 L. J. Ex. 13; or a passenger on a 'bus was struck by a driver's whip, *Ward* v. *General Omnibus Co.*, 42 L. J. C. P. 265; or a packing case fell on a passer-by as in *Briggs* v. *Oliver*, 35 L. J. Ex. 163; so also if it is through a machine in the control of the defendants, which could not have

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The law laid down in *Wilson* v. *Merry* (1868), L. R. 1 H. L. Sc. 326, is the law by which the Court is bound. (*Woods* v. *Toronto Bolt & Forging Co.*, *Dimsford* v. *Toronto Bolt & Forging Co.*, 11 O. L. R. 216.)

&c. which caused his injury, or that, if he did know, that he had given information as specified in sect. 2, sub-sect. 3, within a reasonable time. This would be in accordance with the somewhat analogous case at Common Law, where for a servant to recover from his master for defective machinery, &c., his statement of claim must allege, and he must prove, that his master knew of the defect and he did not, *Griffiths* v. *London and St. Katharine's Dock Co.*, 13 Q. B. D. 259 (*d*). (In Canada, *Ross* v. *Cross*, 17 O. A. R. 29.) This, however, does not appear to be the case, and in *Weblin* v. *Ballard*, 17 Q. B. D. 122, Mr. Justice Smith states that such knowledge of a servant is a matter of defence. As such it seems best to deal with it, and the matter raised in this subsection, as well as in sect. 2, sub-sect. 3, will be treated of later, in

happened if the usual care had been taken, it is for the defendants to show how the accident came about without negligence on their part; as where goods being raised by a crane were allowed to fall on the plaintiff, *Scott* v. *London Dock Co.*, 34 L. J. Ex. 220. In *Christie* v. *Griggs*, 2 Camp. 79, when a coach overset, Mansfield, C.J., said that on proof being given of the accident the plaintiff had proved enough, and that it lay on the defendant to prove that the coach was well built and the coachman a skilful driver. See also *Kearney* v. *L. B. & S. C. R.*, L. R. 5 Q. B. 411, where a brick fell from a railway arch a train had just gone over, injuring the plaintiff passing below, and he recovered; and the decision to the opposite effect in *Welfare* v. *L. B. & S. C. Rly. Co.*, L. R. 4 Q. B. 693, where a plank and a roll of zinc falling on a person in a station was not held sufficient evidence of negligence. It is on a similar principle that the happening of an accident on a railway is almost presumptive evidence of negligence, which the defendants must rebut by proving they used due care, *e.g.*, by proving the defect was latent, as in *Readhead* v. *M. R.*, L. R. 1 Q. B. 379, and in *Holton* v. *L. & S. W.*, 1 C. & E. 542. Similarly in *Macfarlane* v. *Thompson*, 1884, 12 R. 232, the pursuer was injured by a boiler slipping on him from unexplained causes. It was held that where an accident so happens it will not raise a presumption, there must have been a defect for which the master should be liable. Some defect must be proved, unless the accident happening could only have happened through a defect, as where a rope broke used by a steeplejack, as in *Fraser* v. *Fraser*, 1884, 9 R. 896; or when tackle fell and no satisfactory explanation was given as to its cause, as in *Walker* v. *Olson*, 1884, 9 R. 946, it is not necessary to prove the precise nature of the defect to make the master liable. See a somewhat contradictory opinion in *Gavin* v. *Rogers*, 1889, 17 R. 206.

(*d*) This analogy is carried somewhat further, for if the plaintiff had complained to his master, and his master had promised to put the defect right, he could recover, notwithstanding his knowledge, *Holmes* v. *Clarke*, 30 L. J. Ex. 135, affirmed 9 L. T. 178, Ex. Ch.; also see case under Act, *Sanders* v. *Barker*, 6 T. L. R. 324.

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Ross v. *Cross*, 17 O. A. R. 29.

the chapter of Defences open to Masters (*e*). Having established these points the plaintiff will then have the same rights as if he were a stranger, *Thomas* v. *Quartermaine*, 18 Q. B. D. 685.

Sect. 1, sub-sect. 1.—*Where injury is caused to a workman by reason of any defect in the condition of the ways.*

It must be remembered this is to be read along with the qualifying clauses in sect. 2, sub-sects. 1 and 3.

(*e*) As to this point see the ambiguous remarks of Lord Coleridge in *Church* v. *Appleby*, 58 L. J. Q. B. 144, indicating that the plaintiff, who there failed, might have recovered, had the knowledge of the master within the meaning of the sub-section been proved.

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Cases decided under sect. 3, sub-sect. 1.

Contributory negligence.]—The plaintiff, in going to that part of the defendants' buildings where his work was, had to pass through a long room, the passage being nearly straight until within ten or twelve feet of a hoist, where it turned to the left. He was quite familiar with the passage, which was well lighted, but on the occasion in question, while looking at a man at work repairing the hoist, instead of turning towards his workroom he walked straight into the hole and fell to the cellar below, thus causing injury. As a rule there was a bar protecting the entrance to the hoist, but on the occasion in question this bar had been removed on account of the repairs. The action was dismissed upon the ground of contributory negligence on the part of the plaintiff. On appeal, held, that there was no defect in the condition of the "way" within the meaning of the Workmen's Compensation for Injuries Act, for which the defendants were responsible; and by the Supreme Court of Canada, affirming the decision of the Court of Appeal, that there was no evidence of negligence of the defendants to which the accident could be attributed, and W. was properly non-suited at the trial. (*Headford* v. *McClary Manufacturing Co.*, 23 O. R. 335; 21 A. R. 164; 24 S. C. R. 291.)

Public street.]—A public street in a defective condition, used by an employer in connection with his business, is not a "way used in the business of the employer" within the meaning of the Workmen's Compensation for Injuries Act. The defendants' factory was built immediately on the line of the public street, which was fourteen feet wide at the place, and on the other side there was a steep declivity without a fence. One of their workmen was on a load of straw on a waggon, unloading it into the defendants' premises through an aperture facing the street, when he lost his balance, fell off and down the declivity, and was killed. Held, that the defendants were not liable. (*Stride* v. *Diamond Glass Co.*, 26 O. R. 270.)

Plank.]—The foreman of the defendant, a contractor for the erection of a building, desiring to pry up a part of the flooring, placed a new plank, supplied by the owners of the building, about eleven feet long by eight inches wide and three inches thick, which the evidence showed had a knot in it two inches wide and was cross-grained, across an opening in the ground floor, intending to use it as a fulcrum. The plaintiff, a labourer carrying a heavy scantling, was directed by the foreman to place it in another part of the building, and, while crossing the plank to do so, was precipitated into the cellar by the breaking of the plank at the knot, and was injured. It did not appear that there was any way beyond the plank. Held, that the plank was a "way" within the meaning of sub sect. 1 of sect. 3 of the Workmen's Compensation for Injuries Act, and that the knot and cross-grain were defects in the way for which the defendant was responsible. (*Caldwell* v. *Mills*, 24 O. R. 462; and see *Cooper* v. *Hamilton Steel and Iron Co., Ltd.*, 7 O. L. R. 353.)

This means a defect of a permanent or *quasi* permanent nature.

In *McGiffin* v. *Palmer's Shipbuilding Co.*, 10 Q. B. D. 5, a workman was employed to wheel iron balls along a roadway. Whilst so engaged, the car struck an obstacle carelessly left projecting into the roadway, and this caused him to fall, and the iron balls rolling on to him so injured him that he soon after died. Held, not a defect within the section.

A definition of a way was well given in the later case of *Wilkes* v. *Watts*, (1892) 2 Q. B. 92. Here a workman was employed in a large workshop where there was a catchpit which was covered with a lid and had not been used for five years. It was then opened, and the plaintiff not being warned it was open, and crossing over it, fell through and was injured. It was held it was a way, and Mr. Justice Lopes defined a way as follows:—"In a shop where workmen are employed, any part of the shop which a workman is required, or which it is his duty to traverse in the course of his employment, is a way within the meaning of the statute." But the fact of the hole having been open did not make it a defect in the way, as there was good reason for its being open, but the plaintiff was injured through not having been warned. This did not bring the case within the sub-section, and the case was sent for re-trial, to see whether he was entitled under sub-sect. 2.

In *Bromley* v. *Cavendish*, 2 T. L. R. 881, the defendants, a cotton spinning company, were erecting machinery and works in connection with their mills, and workpeople were employed on the premises. The plaintiff, a mill hand, in coming out had to pass over a hole where a weighing machine was being erected, on a mere plank. It was loose, and tipped, and she was injured. The Court of Appeal held it was a defect in the ways for which the defendants were liable. So in *Mitchell* v. *Holdsworth*, 76 L. T. J. 101, when the passage between a wall and machinery was only eleven inches wide, and the husband of the plaintiff in passing along it was caught and killed, it was held to be a defect within the section. So in *Gill* v. *Thorncroft*, 10 T. L. R. 316, an arrangement of two barges moored together was held to form an unsafe way, and the plaintiff recovered.

But it is not every way that is dangerous that is defective. All the circumstances must be considered. In *Pritchard* v. *Long*, 5 T. L. R. 639, the husband of the plaintiff worked at the defendants'

docks at Newport. The way he took leaving his work was most dangerous, and he fell and was killed. It was proved that there was another way he might have taken, but it was not proved that he knew of it; but as he was only permitted, not ordered, to use the way he did, and as no negligence on the part of the defendants was proved, the action against them failed.

So in *M'Carthy* v. *British Shipowners' Co.*, 10 L. R. Ir. 384, the husband of the plaintiff working in a ship was killed by falling down an unfenced hatchway. No negligence was proved against the defendant, and the Court held, assuming even there was negligence in leaving it open, it was the negligence of a fellow-servant, and decided for the defendants (*f*).

A similar point has been raised in several Scotch cases. In *Jamieson* v. *Russell*, 1892, 19 R. 898, the husband of the pursuer was a ship's carpenter, and was killed by falling into an open tank when leaving the ship by the only exit available. It was dark, and there was no light. A ladder he had to go up was close to the tank. On former occasions the tank had been protected. Held, the pursuer was entitled to an issue, *i.e.*, it was not a case where an English plaintiff could be non-suited. This case was distinguished from *Forsyth* v. *Ramage*, 1890, 18 R. 21. There the pursuer, the servant of the defenders, was fitting up a boiler on a steamer that was being built. He usually went to his work by the forward hatch. This being blocked he had to go after hatch and through the engine room. In doing so he fell through a man-hole. He did not know of its existence as it had been covered before, and it was only guarded by a few bead pipes, and there was no sufficient light. Held, no relevant averment of fault on part of the defenders, and the action was dismissed. Note fact.—The ship was in course of building, so that more dangers ought to have been expected and guarded against. In *M'Quade* v. *Dixon*, 1887, 14 R. 1039, the pursuer was a miner, and when attending his horse it was startled, knocked him down, and he fell on a sleeper with a projecting nail. This entered his knee, and ultimately he had to have his leg amputated. Held, misadventure (*g*).

(*f*) See also *O'Neill* v. *Everest*, 61 L. J. Q. B. 453, as to an open hatch on a barge leading to cabin not being conclusive of negligence.

(*g*) See also *Bowie* v. *Rankine* (*infra*), p. 101.

Sect. 1. sub-sect. 1, continued.—*Where injury is caused to a workman by reason of any defect in the condition of the . . . . works, machinery, or plant.* Note, as before, the qualifying clauses of sect. 2, sub-sects. 1 and 3.

The expression "works" must be taken to mean works already completed, and not works in the course of construction. In *Howe* v. *Finch*, 17 Q. B. D. 187, the plaintiff was a plumber, and a new wall of his master's that was being erected gave way and fell upon him. Held, he could not recover. But in *Brannagan* v. *Robinson*, (1892) 1 Q. B. 344, where a servant of a builder was injured by the wall of a building that was being pulled down falling upon him, it was held that the statute did apply and he could recover (*h*).

(*h*) So also in *Flynn* v. *McGee*, 1891, 18 R. 555 Sc., a similar case, where the pursuer was injured through a rotten floor giving way in an old building that was being pulled down.

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Cases decided under sect. 3, sub-sect. 1, and sect. 6, sub-sect. 1.

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Want of reasonable care—Evidence.]—In an action by a workman against his employers to recover damages for injuries sustained owing to the falling of the cage of an elevator in the defendants' factory, the negligence charged was in the manner in which the heads of the bolts were held and in the nature of the safety-catch used upon the cage. There was no evidence to show that the defendants were aware, or should have been aware, that the bolts were improperly held. They had employed a competent contractor to do this work for them only a few weeks before, and it was not shown that the alleged defect might readily have been discovered. Held, that the defendants were not liable upon this head. (*Murphy* v. *Phillips*, 25 L. T. N. S. 177, distinguished.) The safety-catch was made for the defendants by competent persons, and there was no evidence that it was not one which was ordinarily used. Held, that the defendants were not liable upon this head unless there was a want of reasonable care on their part in using the appliance which they used, and it was no evidence of such want of reasonable care merely to show that a safety-catch of a different pattern was in use ten years previously by others, or even that it was at present in use, and that a witness thought it might have prevented the accident; and as no negligence was shown the defendants were not liable, either at common law or under the Workmen's Compensation for Injuries Act. (*Black* v. *Ontario Wheel Co.*, 19 O. R. 578; and see *McIntosh* v. *Firstbrook Box Co.*, 10 O. L. R. 526; and *post*, p. 78.)

Omission of statutory duty—Cause of accident.]—K., a workman in a cotton mill, was killed by being caught in a revolving shaft and dashed against a beam. No one saw the accident, and it could not be ascertained how it occurred. In an action by his widow and infant children against the company the negligence charged was want of a fence or guard around the machinery, which caused the death of K., contrary to the provisions of the Workmen's Compensation Act. Held, that whether the omission of such statutable duty could or could not form the basis of an action at Common Law, the plaintiff could not recover in the absence of evidence that the negligence charged was the cause of the accident. (*Canadian Coloured Cotton Mills Co.* v. *Kerr*, 29 S. C. R. 478, but see *Watson* v. *Lincoln Paper Mills Co.*, 9 O. L. R. 110.

Again, the section applies to a case where a machine, though not defective in construction, is yet unfit for the purpose to which it is applied. In *Heske* v. *Samuelson*, 12 Q. B. D. 30, the plaintiff in the employ of the defendant was killed by a piece of coke falling on him from a double lift used at a blast furnace. The lift consisted of two platforms which ascended and descended alternately, and at the time the deceased was injured he was removing empty barrows from the platform at rest at the bottom of the lift. There was evidence that the accident arose either from the sides of the lift not being fenced, so as to prevent coke falling over, or from the lower platform not being roofed so as to protect those working on it from falling coke. Held, a defect in the condition of the lift, for which the defendants were liable.

Cripps v. *Judge*, 13 Q. B. D. 583, in the Court of Appeal, was decided on the same principle. In this case the plaintiff was injured by the breaking of a ladder, which was used to support a scaffold. As a ladder it may have been a very good ladder, but the defendant having used it for a purpose for which it was unfit, was held liable. This case and *Heske* v. *Samuelson* were approved and followed in *Weblin* v. *Ballard*, 17 Q. B. D. 122, where a ladder that slipped, and from the way it was fixed was likely to slip, was held to be defective plant. Here a fireman in the defendant's brewery had to turn on steam to a donkey engine by a valve some distance from the floor, and which could only be reached by means of a ladder placed against a pipe, which, owing to a bend in it, made the ladder unsteady. The defendant had seen the ladder so used. The fireman was found dead in the engine room, apparently killed by the ladder having slipped when he was on it. Held, the defendant was liable.

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Cases decided under sect. 3, sub-sect. 1, and sect. 6, sub-sect. 1—*continued.*

See *Wilson* v. *Owen Sound Portland Cement Co.*, *post*, p. 86.

Warning—Contributory negligence.]—The lower blade of a pair of steam shears was attached by a bolt to an iron block, called the bed plate, some eight inches thick, upon which the iron to be cut was put, and along the face thereof, where the workmen stood, was a guard three inches high under which the iron was placed and pushed forward to the shears, the only danger being when the iron became too short to allow the guard to be any protection. The bolt was too long, projecting out about four and a half inches, which, it was urged, was a defect in the machine, making it dangerous, and the cause of the accident to the plaintiff; but the evidence failed to show that it was insufficient for the purpose for which it was used, or likely to cause injury by reason of its length. The plaintiff, who had previously

A fortiori if a machine is defective in construction and so unfit for the purpose to which it is applied, the defendant can only continue to use it at his peril. In *Paley* v. *Garnett*, 16 Q. B. D. 52, the roller of a jute-cutting machine used as the feeder was made in sections. These were slightly apart, and, in consequence, the jute caught. Had it been solid the jute would not have caught. The plaintiff, who worked at the machine, complained to his master about it, and a new roller was got, but not put in. In the interval the plaintiff, in removing some jute that had stuck, got his fingers caught and three taken off. The machine was held to be defective within the section, and it was also held that if a master have notice of a defect in a machine he does not discharge his duty by ordering a new one. He ought to stop working the defective one at once. This case is the stronger as the roller does not appear in any way to have become defective by wear. It was defective by comparison only; there were better rollers in the market. But if a machine is not defective in construction so far as doing its work well is concerned, then it is decided in *Walsh* v. *Whiteley*, 1888, 21 Q. B. D. 371, that the mere fact of being dangerous to a workman employed to work it does not prove that there is a defect within the section, as by sect. 2, sub-sect. 1, the only defects contemplated are those implying negligence on the part of the employer or someone entrusted by him with the duty of seeing the machines kept in

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seen others working at the machine, was put to work at it himself and had worked several times at it prior to the accident without injury or fear of any, the accident being caused by the piece of iron he was holding becoming too short to hold outside of the guard, and in attempting to hold it down with another piece his fingers got jammed and crushed. Evidence was given that the accident could have been avoided by the use of tongs. No instructions were given plaintiff except a warning not to let his fingers get too close to the shears. Held, that the defendants were not liable for the accident, there being no evidence that the bolt was insufficient for the purpose for which it was used to bolt the under side of the shears to the bed plate, or that from its length it was likely to injure a person working at the machine. *Quære* whether there was evidence of contributory negligence on the plaintiff's part. (*Brady* v. *Canada Rolling Mills Co.*, 19 O. R. 731, and see *post*, p. 42.)

Sect. 3, ad sect. 2.

Warning of danger at work.] The defendant's foreman had been in the habit of warning the workmen when steel was to be cut, and on the occasion when the plaintiff was injured, there was liability under the Workmen's Compensation for Injuries Act. (*Choate* v. *Ontario Rolling Mills Co.*, 27 A. R. 155. See *British Columbia Mills Co.* v. *Scott*, 24 S. C. R. 702, *ante*, p. 19, and *post*, p. 78.) In *Martin* v. *Donaldson et al.*, 7 O. L. R. 376, the differences between sub-sect. 1 of sect. 6 and the corresponding provision of the English Act are pointed out

proper condition. In this case the plaintiff had to place a driving band on a pulley which had holes in it. This had to be done whilst it was in motion. Whilst attempting it he got his thumb caught in one of the holes, and it got jammed between the pulley and the bed plate, and was taken off. Pulleys without holes were common. The Court, Lord Esher dissenting, gave judgment for the defendant (*i*).

But a master must not expose his servant to unnecessary danger, and *Morgan* v. *Hutchings*, 59 L. J. Q. B. 197, decides that it is his duty to take all reasonable precautions to protect his servants. Here a leather machine, in every way perfect, and in no way defective for the simple purpose of pressing leather, had at its side a wheel and cogs unguarded to the employer's knowledge. A boy of thirteen who fed the machine with leather got his hand caught, suffered injury, and recovered damages (*k*). Lord Esher expressed

(*i*) This was followed in *Butler* v. *Birnbaum*, 7 T. L. R. 287. A man employed in the manufacture of waterproofs was cerebrally affected by the fumes of some of the chemicals used. His case that in some machines the fumes were more guarded against failed, for apart from actual negligence an employer is not responsible for not having the newest and most up-to-date machinery. As said in the previous case of *Walsh* v. *Whiteley* (p. 40), to require owners of machinery to adopt the very latest improvements or to omit to do so at their peril, would be to place an intolerable burden on them. But there must be reasonable care. In *Carter* v. *Clarke*, 78 L. T. 76, a ship so badly ventilated as to allow accumulation of gas, which exploded, was held to be defective.

(*k*) In *Milligan* v. *Muir*, 1891, 19 R. 18, where a boy got his hand caught in an unfenced copper cutting machine, it was held he could not recover, as it was driven by hand, and so did not need fencing.

In *Wallace* v. *Cutter Paper Mills*, 1892, 19 R. 915, the husband of the pursuer was killed while pointing out a defect in a calendar machine. It was dangerous and should have been fenced. The deceased had complained before of the want of the fence. Had it been fenced he would not have been killed. Held, defenders liable for not fencing, and that the deceased continuing to work did not imply he relieved his employers from their responsibility. *Smith* v. *Baker*, (1891) A. C. 325, followed.

In *Shields* v. *Murdoch*, 39 S. L. R. 659, the pursuer, through slipping, got his fingers caught in unfenced cog wheels, and was held entitled to an issue. In *Edwards* v. *Hutcheon*, 1889, 16 R. 694, the drum of a thrashing machine was not fenced, and a girl who fell into it and got her leg wrenched off was held entitled to damages. In *Smith* v. *Harrison*, 5 T. L. R. 406, through there being no wire guard a shuttle flew out of a loom and struck the plaintiff in the eye. Her employers were held liable.

In *Robb* v. *Bullock*, 1892, 19 R. 971, it was held there was no duty

his strong opinion: "A master has no right to allow his servants to use a machine which he knows can only be used with danger."

But a man must not wilfully run into a danger due to a defect and then seek to make his master liable if he is hurt. In *Martin* v. *Connah's Quay Alkali Co.*, 33 W. R. 216, where a wagon was in a defective state, of which the workman was aware, and he used it in such a way as to cause injury to himself when he knew how to use it properly and might have avoided any accident, it was held he could not recover (*l*).

to fence under the particular circumstances, and there being no negligence the defenders were held not liable.

As to a machine made defective by removal of a guard, see *Tate* v. *Latham*, (1897) 1 Q. B. 502.

(*l*) In *Corcoran* v. *East Surrey Ironworks Co.*, 58 L. J. Q. B. 145, a boy was engaged in moving certain iron stanchions in a trolly, and the stanchions were not packed or protected from falling off, and one fell and injured him. It was proved that he put his hand to steady the stanchions, not as usual on the stanchions themselves, because they had been newly painted, but below them. It was held such packing was not a defect, and neither had he been injured through conforming to orders he had to obey; and see also *Membery* v. *G. W. R.*, 14 A. C. 179.

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In the defendants' dye house over the tanks containing the dye was certain machinery consisting of a series of rollers for wringing the dye out of the warp as it came from the tanks, having cog-wheels at the ends thereof where they connected with the frame of the machine. There were spaces between the tanks where planks were placed for the workmen to pass along, which were always in a slippery condition. The plaintiff, a workman employed by the defendants, who was aware of the absence of a guard, but did not consider it a defect, while returning along one of these planks from the discharge of his duty in disentangling a warp, slipped, and by reason, as was found by the jury, of the defendants' negligence in not guarding the wheels, in trying to save himself, caught his hand therein and was injured. Held, that the cog-wheels constituted part of the machinery, and, being dangerous, should have been guarded, under sect. 15, sub-sect. 1, of the Factories Act, R. S. O. 1897, c. 256, and that the non-guarding constituted a "defect in the condition of the machinery" under the Workmen's Compensation for Injuries Act. *McCafferty* v. *Gale Manufacturing Co.*, 19 A. R. 117, commented on. Held also, following *Baddeley* v. *Earl Granville*, 19 Q. B. D. 423, that the maxim *Volenti non fit injuria* does not apply when an accident is caused by the breach of a statutory duty. *Rodgers* v. *Hamilton Cotton Co.*, 23 O. R. 425; and *supra*.)

Machinery—Factories Act—Volenti non fit injuria.]—The plaintiff was employed in the laundry department of the defendants' factory, and while she was standing on a bench to open a window for the purpose of letting steam and hot air escape, her hair was caught by an unguarded revolving horizontal shaft which passed

But it has been expressly decided in Scotland, and it seems equally in accordance with the law in England, that a pursuer has a right to assume that his employer's tackle is good and sound, and is not guilty of contributory negligence because he does not provide against possible defects. In *Rooney* v. *Allen*, 1883, 10 R. 1224, a quay labourer was injured through a chain breaking which was being used in unloading grain from a ship. The sheriff found the chain defective (*m*), but held him not entitled, as he ought to have taken shelter under the deck when bags were being hoisted. This, on appeal to the Court of Session, was overruled on the principle stated, viz., that he was not bound to take shelter to provide against a possible defect in his employer's tackle.

Though a master is thus answerable for defects traceable to his negligence he is not responsible for those due to the negligence of a fellow-servant.

In *Robbins* v. *Cubbitt*, 46 L. T. 535, the plaintiff was injured through a pail falling on him. It was fastened by clips, and steadied by a rope held by a man below. The man who should have held the rope being temporarily absent, it swayed about and caught on a cross timber and became unhooked, and fell on the plaintiff. The jury found the accident due not to a defect but to the man being negligently absent. He being a fellow-servant,

(*m*) In this case the defender's stevedore stupidly threw the defective link into the Clyde. This preventing a proper scientific examination, the sheriff held onus of proving its condition was on the defenders. But for this the pursuer would have had to prove it defective, and it seems there was every chance he would not have succeeded. In the similar case of *Milne* v. *Townsend*, 1892, 19 R. 830, when it was proved a crane broke down through a latent defect in a band, the master was held not liable.

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through the room near the ceiling and in front of the window and she was severely injured. Held, that she could not be said to have been doing an act so entirely unconnected with her employment and duties as to be regarded as a mere volunteer, and, as such, outside the protection of the Act, and that there was a "defect in the arrangement" of the machinery within the meaning of the Workmen's Compensation for Injuries Act, that is, an element of danger arising from the position and collocation of machinery in itself perfectly sound and well fitted for the purpose to which it is to be applied and used. The effect of sub-sect. 3, sect. 6, and what is meant by voluntarily incurring risk of injury considered. *McCarthy* v. *Coal Manufacturing Co.*, 19 A. R. 117.

and not in authority, the plaintiff could not recover (*a*). Where, however, want of care on the part of fellow-servants is to be anticipated, it is the duty of a master to provide against it.

In *Staunton* v. *Scratton*, 62 L. J. Q. B. 405, the Court held that an employer who used an arrangement of machinery not in itself defective, but the handling of which, as he knows, is entrusted to such men as stevedores' labourers, was not entitled to have excluded from the consideration of its reasonable fitness an obvious chance of danger through their want of care; and also further, the absence in the conditions of the machinery taken as a whole, of any sufficient safeguard against danger from any ordinary and probable occurrence, such as that of a slip in the management of a winch, is a defect.

As might be expected, the defence rapidly grew up that, after all, if the machine was unfenced or defective the man knew all about it as well as his master, and need not have used it unless he had liked, and if he did, he used it voluntarily, and knowingly took the risk of it upon himself. This defence of *volentia*, as it is termed, will be dealt with later on; in the meantime I refer to it here, as in so many of the cases under the Act the consideration of it forms the most important part of the decisions given. Of these, the most discussed, least followed, and most distinguished, is that of *Thomas* v. *Quartermaine*, 18 Q. B. D. 685. In this case there was a gangway in a brewery between a boiling vat and a cooling vat. It was inadequately fenced, and in parts only three feet wide. The plaintiff was trying to pull a board from under the boiling vat. It stuck at first and then came away with a jerk, and he was thrown into the cooling vat and was scalded. The way being unfenced was held to be a defect, otherwise the question of *volentia* could not have arisen, but really very little attention was given to this point, as the judges preferred to decide it on the broader ground of the plaintiff having run the risk willingly. The following case of *Yarmouth* v. *France*, 19 Q. B. D. 647, in a Divisional Court, is interesting in several ways: first,

(*a*) See also *Gordon* v. *Pyper*, W. N. 1892. 169, H. L. Sc., where the defendants were held not liable for a rope good when supplied but which had become frayed by use. Its being out of repair was due to the negligence of the captain, a fellow-servant, and the Act does not apply to seamen. This case goes a long way to show why it should.

from its particular facts, and secondly, because as far as it is possible for an inferior Court to overrule a superior one, they here succeeded in doing it.

Lord Esher was sitting as a judge in the two cases, and was of the same opinion in both. In *Thomas* v. *Quartermaine* he could not carry his brother judges with him, but in this case he secured a majority to support him. Here the plaintiff had to drive a cart-horse which was vicious and dangerous. He complained to the foreman of the stable, but was told to get on with it. He did so, with the result he got kicked and his leg was broken. The judges held that the horse was "plant" within the section, that its vice was a "defect" in such plant, but that the plaintiff had not known the risk so as to have taken it with a full appreciation of its nature. Lopes, L. J., was very strongly of opinion that he had (*a*).

The cases of *Saunders* v. *Barker*, 6 T. L. R. 324, where a pump in a brewery had a wheel that was defective, and *Amos* v. *Duffy*, 6 T. L. R. 339, where the guard of a circular saw slipped owing to a defective screw, and in both of which the plaintiffs had continued using the machines after knowing of their defects, will be found more fully referred to in Chapter III., at p. 99; and the cases at Common Law, in Chapter I., should also be considered.

A rather curious decision of the Court of Appeal overruling the Divisional Court, is that of *Thomson* v. *City Glass Bottle Co.*, 85 L. T. R. 661. Here a machine broke down, was condemned, and ordered to be removed. In the course of such removal it slipped and injured the plaintiff, and the defendants were held liable.

Again, note the plaintiff must prove the defect was due to the

(*a*) In the Scotch cases *Huston* v. *Edinburgh Tramways Co.*, 1887, 14 R. 621, a trace horse was an habitual faller, and through falling injured the boy who rode it. Held, such falling a defect for which the defenders were liable. In *Wilson* v. *Boyle*, 1889, 17 R. 62, a horse restive near steam engines and sent near them was held defective, but the pursuer did not recover, as he knew of it, and had asked for an assistant to help him, and had been given one. In the result the assistant was not of much use, but then he was a fellow-servant, and the pursuer had taken the risk. So in *Fraser* v. *Hood*, 1887, 15 R. 178, where a stableman was told by his master to tie up a stallion that was dangerously vicious, and was badly hurt, he could not recover, as he fully appreciated the risk.

negligence of the employer or of some one for whom he is responsible, as specified in sect. 2, sub-sect. 1.

In *Moore* v. *Gimson*, 58 L. J. Q. B. 169, a wall on the defendant's premises had been injured by fire. It was swaying dangerously, and the plaintiff, who was working below, called the foreman's attention to it. The foreman at once stopped the plaintiff and other men from working there, and sent for the contractor who was repairing the premises, and told him to make it secure. The contractor shored it up, and thought he had made it safe. About forty-five minutes after the plaintiff and other men had returned to work beneath it, it gave way above the shoring, and fell on the plaintiff, and injured him. The foreman had not examined the safety of the wall himself, but reasonable care had been exercised in selecting a competent contractor. Held, no defect within the Act, or if any, that the master had been guilty of no negligence either by himself or his foreman. Again, in *Riddle* v. *Lovett*, 16 Q. B. D. 605, the plaintiff had employed Lovett to erect a boat staging for him. Lovett did it negligently; it slipped, and one of the plaintiff's workmen was injured. To settle the action this man brought the plaintiff paid him 125*l.*, and then sought to recover it from Lovett. Held, he could not. He had employed a competent contractor, he had not otherwise acted negligently, and therefore the man must have failed against him, so that the payment made was a voluntary one. Likewise, in *Perry* v. *Brass*, 5 T. L. R. 253, a master was held not liable for a borrowed ladder that broke, as no negligence in allowing it to be used was proved against him (*p*).

(*p*) See also *Thomson* v. *Dick*, 1892, 19 R. 804, where a workman was killed by the fall of a scaffold erected by himself and two other experienced men, through a stone accidentally falling on it, and the defenders were held not liable. The point in *Ayres* v. *Bull*, 5 T. L. R. 202, seems to have been that a girl fell down a ladder through wearing high-heeled boots; she failed. So a washerwoman in *Moore* v. *Ross*, 1890, 17 R. 796, failed. She fell down a trap-door, through which was a ladder used for going up and down from one floor to the other. Lord M'Laren said: "Then the question of known danger is raised. One class is where the master, by the adoption of some known and suitable appliance, may diminish the danger to his servants and does not adopt it; in such cases the rules of the statute as to injuries resulting from defects will probably apply; but the other class is where the danger is one which it is perfectly in the power of the servant to guard himself against simply by keeping his eyes open. That is the typical case in which the law says the servant must take the consequences of his own neglect."

Sect. 1, sub-sect. 2.—*By reason of the negligence of any person in the service of the employer who has superintendence entrusted to him whilst in the exercise of such superintendence.* This sub-section is also qualified by sect. 2, sub-sect. 3, and must also be read with sect. 8 as follows:—*The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour.* This qualification does not apply to where a superintendent voluntarily and temporarily engages in manual labour: *Ray* v. *Wallis*, 3 T. L. R. 777; nor need the superintendent of a necessity have actual superintendence over the workman injured: *Osborne* v. *Jackson*, 11 Q. B. D. 619. Here the plaintiff, a bricklayer in the employ of the defendants, was at work near a shoring while a scaffold was being taken down by their other workmen. Thomas, the defendant's foreman, himself handed a scaffold plank to a labourer and called him to take it. Owing to his being too far off he could not hold it, but let it slip, and it knocked down the shoring, which fell on the plaintiff and injured him. Held, plaintiff could recover as the foreman was in superintendence.

In *McLeod* v. *Pirie*, 1893, 20 R. 381, the plaintiff averred he was engaged under the direct superintendence of G., the estate agent of the defendant, who owned a property, Ross-shire, and that when the defendant was resident in London G. had sole control. Held, that the description was sufficient to bring G. within the section without asserting in direct terms he was not engaged in manual labour.

In *Shaffers* v. *General Steam Navigation Co.*, 10 Q. B. D. 356, the plaintiff and one J. were employed with others by the

In *Batchelor* v. *Fortescue*, 11 Q. B. D. 474, a watchman was killed through standing in a dangerous place when he need not have done so: action failed. So also a workman, who was struck by his master with a hammer through his master missing his aim, but need not have been standing so near him, failed: *Gray* v. *Douglas*, 1890, 17 R. 858.

In *Harris* v. *Tinn*, 5 T. L. R. 221, the plaintiff was injured when lifting a roll of iron, through alleged improper scotching: failed. So in *Kay* v. *Briggs*, 5 T. L. R. 233, the plaintiff cleaned a brick machine unnecessarily with his fingers and lost them: failed. Contrast this with *Race* v. *Harrison*, 10 T. L. R. 92, C. A., where a boy was ordered to clean a brick machine and provided with no proper scraper; on being hurt, was held entitled to damages.

defendants in loading sacks of corn into the hold of a ship. J.'s duty was to guide the beam of the crane by means of a guy rope and to give directions when to lower or hoist the crane. He neglected to use the guy rope, and the sacks in consequence fell down the hatchway and hurt the plaintiff, who was working in the hold. Held, that J. was engaged in manual labour and was not a person having superintendence entrusted to him within the section.

In *Kellard* v. *Rooke*, 21 Q. B. D. 367, C. A., the plaintiff with other servants was employed to stow bales of wool in a ship's hold. The workmen were divided into gangs, the foreman of the plaintiff's gang being B. B. was himself a labourer, working on deck, and he gave the signal to the men below when the bales were being dropped down the hatchway into the hold. The plaintiff, who was below, was injured by a bale being dropped without sufficient warning being given by B. to enable him to get out of the way. Held, he could not recover, as

> (a) B. was not a person in superintendence within sect. 1, sub-sect. 2, as defined in sect. 8;
>
> (b) and he was not injured through conforming to the orders of B., within the meaning of sect. 1, sub-sect. 3, even if he had to conform.

In *M'Monagle* v. *Baird*, 1881, 9 R. 364, a miner complained that the roof of the main roadway was unsafe. The overseman caused it to be partially secured, and told the man to go on. The man did so, though he did not think it sufficiently propped. In the event it proved not to be so, and it fell, and he was injured. Held, he was entitled.

So in *Rae* v. *Harrison*, 10 T. L. R. 92, C. A., a boy employed at a brickmaking machine was ordered by the foreman to clean it, but was provided with no proper scraper, and got his hand caught and injured in consequence. He was held entitled to recover under this section.

So in *M'Coll* v. *Black*, 1891, 18 R. 507, the husband of the pursuer was killed when working in a drain, through the sides not being sufficiently propped, and giving way and falling on him. The defendants argued he knew the risk as well as their foreman, but the Court of Session decided it was a case for trial.

Sect. 1, sub-sect. 3.—*By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed.*

This sub-section is also qualified by sect. 2, sub-sect. 3, p. 31.

The negligence is not confined to the order itself, nor is it necessary that conformity to the order should be the *causa causans*, but there must be an intimate connection between the negligence, the injury, and the conformity to the order, *Wild* v. *Waygood*, (1892) 1 Q. B. 783 (*q*).

In this case a joiner in the employ of the defendants was constructing a lift in a house, and, to help him, borrowed a workman from a firm of builders engaged on the premises. Having put a board across the well of the lift he told the plaintiff to stand on it, and then negligently started the lift. This threw the plaintiff down and injured him, and it was held he could recover.

In *Millward* v. *M. R. Co.*, 14 Q. B. D. 68, the plaintiff was a boy, employed by the defendants, and was assisting one of their carmen to unload large iron window frames which were standing upright in a van, secured at each end to the hoops of the van by a string. The carman untied the strings at one end and the plaintiff untied them at the other. The carman did not expressly order him to untie them on this occasion, but had done so on previous occasions, and saw him doing so on this one. The carman then removed one frame without securing the others, and another then fell and injured the plaintiff. Held, he was entitled within sect. 1, sub-sect. 3 (*r*).

(*q*) See also *Hooper* v. *Holme & King*, 13 T. L. R. 6; and *Reynolds* v. *Holloway*, 14 T. L. R. 551, both cases decided on their own special facts.

(*r*) But in *Bunker* v. *M. R. C.*, 47 L. T. 176, the plaintiff failed. He was a boy under fifteen, employed as a van guard. By the rules he was forbidden to drive. When in accordance to the orders of the foreman he did so, and was injured, it was held they were not orders to which he was bound to conform, but rather orders he should have disobeyed.

See also *Medway* v. *Greenwich Inlaid Linoleum Co.*, 14 T. L. R. 291. Here a foreman was in the habit of removing a mixture from a box

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Canadian Notes.

"*Bound to conform.*" *Ante*, p. 29.

But in *Howard* v. *Bennett*, 58 L. J. Q. B. 129, it was otherwise. Here a calico printing machine required two men to work it, the back tenter, to keep the calico straight, and the printer, who, amongst other things, started it and regulated the speed. The plaintiff, the tenter man, was told to do something by the printer which necessitated his placing his hands between the cylinders, and the printer started the machine without warning, and the plaintiff's fingers were cut off. Held, not within the section.

In *Snowden* v. *Baynes*, 25 Q. B. D. 193, C. A., the plaintiff was a machinist, and used to work in a particular shed. He used to receive instructions from the defendant through the carpenter as to the work he should do. Otherwise he was not bound to obey the carpenter. One day the plaintiff elected to work overtime, and whilst in the shed, which was agreed was not safe for two, the carpenter came as well, and by admitted negligence caused the plaintiff injury. Held, not within section.

In *Dolan* v. *Anderson*, 1885, 12 R. 804, the pursuer worked with a machineman who was not a foreman, but who told him what to do. A furnace was being riveted, and he was told to creep inside, which he did, to work there, and for this purpose they raised it a little; when they were lifting it to let him out they negligently let it fall on his feet. Held, he was entitled, and that if the order to come out when the work was finished was not express, it was implied.

In *M'Manus* v. *Hay*, 1882, 9 R. 425, the pursuer, with the foreman, and three others, had to raise an engine weighing about nine cwt. They had raised it about fifteen inches, and the foreman got a brick to put under it to rest it on before the next heave. Being rather heavy for the four remaining men it came down quickly on the brick and crushed the plaintiff's fingers. Held, pursuer bound to conform to the order, but no negligence was shown (*s*).

Sect. 1, sub-sect. 4.—*By reason of the act or omission of any person in the service of the employer done or made in*

in which were revolving blades without stopping the machine. He told the plaintiff to remove it, and he doing so in the same way had his hand cut off. It was held, he had conformed to orders by doing it in the usual manner.

(*s*) Followed in *Brown* v. *Furnival*, 1896, 23 R. 492, where a printer's guillotine was being adjusted on a cart and fell over.

obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf.

This is to be read with sect. 2, sub-sect. 2. That there is to be no right to compensation or remedy

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Canadian Notes. OBEDIENCE TO ORDERS.

Workmen's Compensation Act, sect. 3, sub-sects. 1, 2, 3, 4.

Improper orders.]—The defendants, an iron-works company, used in their business a pair of shears for cutting up boiler-plate and scrap-iron prior to its being placed in the furnace to be melted. It was the duty of the plaintiff and another workman to put the iron into the shears. While a large iron gate was, by the superintendent's orders, being put into the shears to be cut up, by reason of the improper instructions given by the superintendent to the plaintiff the latter, in the course of his duty, was injured. The plaintiff, though apprehensive of danger, was not aware of the nature or extent of the risk, and obeyed through fear of dismissal. In an action against defendants under the Workmen's Compensation for Injuries Act for the damage sustained by the plaintiff, held, that defendants were liable. (*Madden* v. *Hamilton Iron Forging Co.*, 18 O. R. 55.)

Negligence of person in charge.]—Held, that the evidence in this case, in which the plaintiff, while at work in the sweat-box of a sewer-pipe company, and engaged in placing the clay in the press, was, according to his witnesses, injured by reason of S., who was in charge of the press, causing the plunger to come down before the plaintiff had given word, and while his hand was in the press, *primâ facie* brought it within sect. 3, sub-sect. , of 49 Vict. c. 28 (O.), and the non-suit must be set aside and a new trial had. If, while in obedience to orders, injury arises through the negligence of one giving the orders, it is sufficient under this sub-section, and it is not necessary that an order negligent *per se* should have been given, nor is any specific order necessary, general prior orders being sufficient. (*Cox* v. *Hamilton Sewer Pipe Co.*, 14 O. R. 300.)

Superintendence—Gangway.]—The plaintiff was a labourer employed by the defendants to carry mortar to masons, also employed by them, who were building a wall on the defendants' land. The work was being done under the superintendence of a foreman, who, after the wall had been built, directed the plaintiff and one mason to do the tuck-pointing next day. In order to enable the plaintiff to take the mortar to the mason at the foot of the outer face of the wall, the mason and the plaintiff made a gangway of planks, which had been used in the scaffolding, from the top of the wall to an adjacent building, and thence to the ground, and while the plaintiff was walking on the gangway with a load of mortar an insecurely-fastened plank gave way and he was injured. Held, that the defendants were not liable at common law, the mason and the plaintiff being fellow-workmen exercising their own judgment as to the proper means of accomplishing their object, and the planks being strong and sufficient for the purpose required if properly fastened. Held, also, that there was no liability under the Workmen's Compensation for Injuries Act, the mason not being a person to whose orders the plaintiff, in respect of the mode of carrying the mortar, was bound to conform, and the gangway not being a "way" within the meaning of the Act or constructed by a person having in regard to it superintendence entrusted to him.

Negligence in not discovering—Finding of jury.]—A plank forming part of the scaffold being used in the erection of a house had been securely placed in position under instructions of the contractor's general superintendent. Late one afternoon two workmen of their own accord removed the stay on which one end of the plank had rested, and replaced it about a foot higher in an insecure fashion. Early the following morning, to carry out instructions of the foreman, the plank was replaced on the stay by fellow-workmen in the presence of the plaintiff, and when the plaintiff was mounting on it the stay gave way, and he fell and was injured. The jury found that the foreman did not direct the removal of the stay; that the replacing of it caused it to be defective; that the defect was not discovered through the negligence of the foreman. Held, reversing the judgment in 31 O. R. 521, that there was evidence to support the finding, and that it could not be interfered with or disregarded. (*Kelly* v. *Davidson*, 32 O. R. 8; 27 A. R. 675; and see *Garland* v. *City of Toronto*, *ante*, p. 30.)

against the employer *unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of His Majesty's principal Secretaries of State, or by the Board of Trade, or any other department of Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.*

In *Whatley* v. *Holloway*, 62 L. T. 639, C. A., where A. was employed, and received instructions to attend an engine, and also to help the plaintiff in working a saw, and the plaintiff was injured through A. suddenly dropping the piece of wood which they were engaged in sawing to run and see to the engine, it was held that A. was not, in dropping the piece of wood, acting according to his instructions, and that the plaintiff could not recover.

Besides this case—a most hopeless one—I cannot find that this sub-section has been of much service to workmen. If it had been relied on in *Pegram* v. *Dixon*, 55 L. J. Q. B. 447, the result ought to have been different. In this case, during the building of a house the workmen obtained access to the upper part by ladders placed in a well intended for a staircase. There was another well through the house, intended for a lift, down which rubbish had been thrown during the building. Upon the staircase being completed it was closed to workmen as a means of access and the ladders were transferred to the lift well. No precautions had been taken to prevent workmen from throwing rubbish down the lift well after the ladders had been so transferred. The plaintiff was ascending it when a boy threw a plank down from the third floor, which struck him and broke his collar bone. The County Court judge found for him, and the judges in the Divisional Court were anxious to preserve him his verdict, but "How," they almost pathetically asked, "can we find the want of a man to warn people a defect in the way?" Had they been asked to find the boy threw the plank down in obedience to particular instructions given by a person delegated with authority, they might have decided differently; as it was they had to reverse the verdict of the judge and enter judgment for the defendant.

Even failing this, surely it would have been better to have contested the case under the Masters' Common Law Liability for using a defective system. It is a much stronger case than *Sword* v. *Cameron*, p. 21 (*supra*). But this is an illustration of the injustice sometimes worked by not being able to join a claim at Common Law with one under the Act.

Sect. 1, sub-sect. 5.—*By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.* This also is to be read with the qualifying clause, sect. 2, sub-sect. 3, p. 31.

The term railway applies to a temporary railway laid down by a contractor for the purposes of construction of works, *Doughty* v. *Firbank*, 10 Q. B. D. 358; but a steam crane fixed in a trolley and propelled by steam on a set of rails is not a locomotive, *Murphy* v. *Wilson*, 52 L. J. Q. B. 524.

In *Gibbs* v. *G. W. R.*, 12 Q. B. D. 208, where it was the duty of F. to clean and adjust the points, &c. of the defendants' line, and he did it negligently, it was held there was no evidence of control (*t*).

In *Cox* v. *G. W. R.*, 9 Q. B. D. 106, the facts were these:—Hopker, who was in the employ of Railway Co. as capstan man, without giving the usual warning, propelled a series of trucks along a line of rails in a goods station and injured the plaintiff, who was engaged in similar work at the other end of the line about one hundred yards off. The capstan was set in motion by hydraulic power, communicated to it by Hopker from a stationary engine at a distance. Held, there was evidence to warrant a jury in finding Hopker was a person who had charge or control of a train upon a railway under the section (*u*). In *M'Cord* v. *Cammell*, (1896) A. C., the House of Lords, reversing the Divisional Court and Court of Appeal, held that the driver and his fireman, or one or both of them, were in control of a train they were breaking up at the time

(*t*) See also the case of *Haysler* v. *G. W. R.*, L. T. (newspaper) 1881.

(*u*) See also *Robinson* v. *Watson*, 1893, 20 R. 144, where a brake on a wagon was defective, but no duty to test was proved against the defendant, and the pursuer failed.

when one of the wagons, owing to improper scotching, ran away and killed the husband of the plaintiff.

Limit of sum recoverable as compensation.

Section 3.—The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Money payable under penalty to be deducted from compensation under Act.

Section 5 (*x*).—There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act

(*x*) I have put sect. 4 after sect. 5, as it seems better to me that sects. 3 and 5 should be together, as they both deal with compensation.

Workmen's Compensation for Injuries Act, sect. 7.

Canadian Notes.

Compensation Recoverable.

7. The amount of compensation recoverable under this Act shall not exceed either such sum as may be found to be equivalent to the estimated earnings during the three years preceding the injury of a person in the same grade employed during those years in the like employment within this Province, or the sum of $1,500, whichever is larger; and such compensation shall not be subject to any deduction or abatement by reason, or on account, or in respect of any matter or thing whatsoever, save such as is specially provided for in sect. 12 of this Act; and see *Farmer* v. *G. T. R. W. Co.*, *post*, p. 110.

Sect. 12. Money payable under penalty to be deducted from compensation.

12. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, or persons claiming by, under, or through a workman, in respect of any cause of action arising under this Act, any penalty or damages, or part of a penalty or damages, which may, in pursuance of any other Act, either of the Parliament of Canada or of the Legislature of Ontario, have been paid to such workman, representatives, or persons, in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or damages, or part of a penalty or damages, under any such Act, either of the said Parliament or of the said Legislature, in respect of the same cause of action, such workman, representatives, or persons shall not, so far as the said Legislature has power so to enact, be entitled thereafter to receive, in respect of the same cause of action, any such penalty or damages, or part of a penalty or damages, under any such last-mentioned Act.

of Parliament to such workman, representatives, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workman, representatives, or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Sect. 3 prescribes a limit, not a measure of damages recoverable. Up to this limit a workman is entitled to receive compensation for all loss sustained as if he were a stranger. Thus, in *Bortick* v. *Head*, 53 L. T. 909, the plaintiff belonged to a class of workman whose average earnings in three years would have amounted to 169*l*. Anything up to 169*l*. the Court held he would have been entitled to, and therefore when the jury gave 69*l*. as damages—60*l*. for loss sustained in the service of his employer, and 9*l*. for loss of overtime worked for someone else—he was held entitled to both.

Nor may the limit thus ascertained be exceeded. In *Noel* v. *Redruth Foundry Co.*, 12 T. L. R. 248, the County Court judge held that the 5*s*. a week which an apprentice received was nominal, and gave 80*l*. compensation. The Divisional Court held this wrong, and decided that adventitious advantages such as tuition could not be included.

The principles on which the loss sustained is to be estimated are fully discussed in *Phillips* v. *L. & S. W. Rly.*, 4 Q. B. D. 406, affirmed 5 Q. B. D. 78.

In the first place, a man who has been injured by the negligence of another is entitled to damages for his loss of time and the expense of his cure. Next, pain and suffering are fair matters for compensation. "An active, energetic, healthy man is not to be struck down almost in the prime of life and reduced to a powerless helplessness, with every enjoyment of life destroyed, and with

the prospect of a speedy death, without the jury being entitled to take that into account, not excessively, nor immoderately, nor vindictively, but with the view of giving him a fair compensation for the pain, inconvenience, and loss of enjoyment which he has sustained" (Mr. J. Field, in *Phillips* v. *L. & S. W. Rly.*); and finally, a plaintiff is entitled to damages for the loss of future profit or earnings.

According to the principles to be gathered from the same case, the measure is—The difference between what the plaintiff might have earned and was likely to have earned if he had not been injured, and what he might earn and was likely to earn in his injured state (*y*).

In case the injury results in death the legal personal representatives of the workman and any person entitled in case of death shall have the same rights of compensation as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

Such persons shall have the same rights as the representatives of a stranger injured by a third party would have under Lord Campbell's Act, 9 & 10 Vict. c. 93. Before this Act, if a person was killed by the negligence of another, his representatives had no right of action on the principle *Actio personalis moritur cum personâ*. As to the case of the wrongdoer dying before verdict given, the law is unaffected by the Act. No action lies against his executors, *Gillett* v. *Fai* L. R. 618.

The provisions of the Ac effect:—

(1).—*When the death o[f a] person shall have been caused* (*z*) *by such wrongful act, neglect or default as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the*

(*y*) The damages are not to be lessened on account of any insurance money the plaintiff may have received, *Bradburn* v. *G. W. Rly.*, L. R. 10 Ex. 1. This rule is different in the case of death. Of course it is a well-known rule that only one action can be brought for the same injury, and that damages must be assessed once and for all, *Mitchell* v. *Darley Main Coll. Co.*, 11 App. C. 127.

(*z*) The statute only applies to death *caused* by the wrongful act. If death takes place before judgment obtained from an independent cause, the axiom applies, and the right of action is gone entirely.

person who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

(2).—*Every such action shall be for the benefit of the wife, husband, parent, and child of the deceased person, and shall be brought by and in the name of the executor or administrator of the deceased person, and the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whose benefit such action shall be brought, and the amount recovered after deducting the costs not recovered from the defendant shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct* (a).

(3).—*Only one action shall lie in respect of the same complaint, and shall be commenced within twelve calendar months after the death of such deceased person.*

(4).—*The plaintiff shall deliver with the statement of claim full particulars of the person or persons for whom and on whose behalf such action shall be brought and of the nature of the claim.*

(5).—"*Person*" *shall apply to bodies politic and corporate.* "*Parent*" *shall include father, mother, grandfather, grandmother, stepfather, and stepmother.* "*Child*" *shall include*

(a) As to apportionment of damages paid into Court and accepted, see *Sanderson* v. *Sanderson*, 36 L. T. 847, Ch. D.

Canadian Notes.

Workmen's Compensation for Injuries Act, sect. 8. Distribution of compensation.

8. When in any action under this Act compensation is awarded in the case of the death of a workman for an injury sustained by him in the course of his employment, the amount recovered, after deducting the costs not recovered from the defendant, may, if the Court or judge before whom the action is tried so directs, be divided between the wife or husband, parent and child of the deceased, in such shares as the Court or judge, with or without assessors, as the case may be, or, if the action is tried by a jury, as the jury may determine.

The rule as to excessive damages is referred to in *Stephens* v. *Toronto R. W. Co.*, 11 O. L. R. 19, and what constitutes a reasonable expectation of pecuniary benefit in *Renwick* v. *Galt, Preston & Hespiler Street R. W. Co.*, 11 O. L. R. 158; see also *Mason* v. *Bertram*, *ante*, p. 31.

son, daughter, grandson, granddaughter, stepson, and stepdaughter.

By 27 & 28 Vict. c. 95, amending above Act, provision was made (1) for those who would have benefited under it, bringing an action in case the executors failed to do so within six months from the death of the deceased, of course the twelve month limit still applying; and (2) for defendants paying money into Court in one lump sum without having to specify the shares into which it was to be divided; and entitling them to a verdict in case more was not recovered by the plaintiff (*a*).

The measure of damages where the claim is for a person killed is not the same as where a man is injured and claims for himself. In this case those entitled can only recover compensation for the actual pecuniary loss suffered by them (*b*), and not for mental suffering, nor loss of companionship, *Blake* v. *M. Rly.*, 21 L. J. Q. B. 233; and damages cannot be recovered for funeral expenses or mourning, *Dalton* v. *S. E. Rly.*, 27 L. J. C. P. 227. A reasonable expectation of pecuniary advantage from the deceased having remained alive may be taken into account by the jury, *e.g.*, the superior education children would have received if their father had lived, *Pym* v. *G. N. Rly.*, 32 L. J. Q. B. 377, and legal liability is not the test in respect of which damages may be recovered under this statute. In *Hetherington* v. *N. E. Rly.*, 10 Q. B. D. 160, the action was brought by the father of his son who had been in the service of the defendants, and was killed by their negligence. The evidence was that he, the father, was fifty-nine; was nearly blind, and injured in his leg and hands; was not able to work as he had done, but worked when he could; and that five or six years before, when he had been out of work six months, his son had helped him, but had never given him money since. Held, there was evidence for a jury of a reasonable expectation of pecuniary advantage to him from his son's life. See also *Franklin* v. *S. E. Rly.*, 4 Jur. N. S. 565.

(*a*) See previous note.

(*b*) Though the estate of the deceased may not have suffered, yet if a person has suffered damage himself he is entitled to recover as where property remains in the family, but he gets less advantage from it, *Pym* v. *G. N. R.*, 32 L. J. Q. B. 377.

If no pecuniary damage be proved the action fails, and the defendants are entitled to a verdict, *Duckworth* v. *Johnstone*, 29 L. J. Ex. 25; and on this principle of compensation being only given for actual pecuniary loss sustained, any money received from an insurance on the life of the deceased, though not necessarily to be deducted *in toto*, should yet be taken into account in assessing the damages, *Grand Trunk Railway of Canada* v. *Jennings*, 13 A. C. 800. Action under the Act will only lie in those cases where the deceased would himself have been entitled to recover if he had remained alive; and if he has settled his claim in his lifetime, no further action can be brought on his dying through the same injuries, *Read* v. *G. E. Rly.*, L. R. 3 Q. B. 355. If, however, he has been induced by fraud, or through a mistake has given a discharge for an inadequate compensation, such discharge will not be conclusive against him if he lives, nor against his representatives in case of death, *Stewart* v. *G. W. Rly.*, 2 D. J. & S. 319; *Hirschfield* v. *L. B. & S. C. Rly.*, L. R. 2 Q. B. D. 1; *Lee* v. *L. & Y. Rly.*, L. R. 6 Ch. 527 (*c*).

A child *en ventre sa mère* is entitled to recover under the Act, *The George and Richard*, 24 L. T. N. S. 717, but not an illegitimate child, *Re Wilson*, 35 L. J. Ch. 243; and *Dickenson* v. *N. E. R.*, 33 L. J. Ex. 91.

Again, when a man has two or more remedies, or against two or more wrongdoers, it is sometimes important which remedy he should first rely on or which party first make liable. The above sect. 5 of the Act deals with one class of case where a man has other statutory rights to penalties in addition to his rights and damages under the Act. In the first place, if he has already recovered a penalty it is to be deducted from any further damages he may recover under the Act, and if he has already recovered damages under the Act he cannot receive any penalty in addition.

But a different rule applies where a man has a remedy against two or more wrongdoers. If he recovers against one cannot recover anything more from anyone else, whether he

(*c*) In *McDonagh* v. *MacLellan*, 1886, 13 R. 1000, Sc., the pl[illegible] had a law agent, but without his advice took 8*l.*, as he th[illegible], on account, but as shown by the receipt he gave in settlement. the Court were satisfied he did not understand its full purport [illegible]as allowed to continue his action on repaying the 8*l.*

other for the same cause of action or for a different cause of action but arising out of the same wrongful act. In *Wright* v. *London Omnibus Co.*, 2 Q. B. D. 271, a cabman was injured through two 'bus drivers racing. A policeman summoned them both, and they were fined under bye-laws and ordered to pay the cabman 10*l.* compensation. Unfortunately for himself he took it, and when afterwards he obtained a verdict against the 'bus company for nearly 200*l.*, judgment was entered for the defendants on the ground he had been already compensated. The matter was *res judicata*. This has an important bearing on actions under the Act. As we have before said, a man is always responsible for his own wrongs, whether master or servant, and there might be cases where it is doubtful whether the master is liable or not, where it might be desirable to join with him as defendant the actual wrongdoer—the master being sued under this statutory, the servant under his common liability. But following a dictum of Mathew, J., in *Monday* v. *Thames Iron Works Co.*, 10 Q. B. D. 62, it seems a practice has grown up in County Courts of not allowing any other cause of action to be joined with that under the Act, and usually at the trial the plaintiff is put to his election whom he will proceed against. In this case, if the servant be sued first and a verdict obtained, he may not be sufficiently responsible for damages, but the master will be discharged; or if the master be first sued, the verdict is likely to be an adverse one, and the plaintiff will be too impoverished to proceed further against the servant (*d*). Most certainly the practice in the Scotch Courts seems better, where a master may be sued in the Sheriffs' Courts under both his statute and Common Law liability, and any other defenders may be joined with him, and in *Campbell* v. *Morrison*, 1891, 19 R. 282, we find a workman who fell from a gangway of a ship in course of

(*d*) Similarly there may be a doubt whether a master is liable at Common Law for his own negligence, or under the statute for that of a servant for whom he is responsible. The plaintiff, then, is in this dilemma: If he relies on the first assumption, and sues him in the High Court, and he proves to be wrong, his action is dismissed. At Common Law his master is not liable, and actions under the statute must be brought in the County Court. If he relies on the second assumption, and sues him in the County Court, under the statute, and he proves to be wrong, he fares hardly better. As a great favour he may be allowed to amend, but then he must cut down his claim to 100*l.*, the limit recoverable under a master's Common Law liability.

building bringing an action against his master, the builders of the ship, and the ship's carpenters who erected the gangway. Of course, there should be the same limitations as to amount of compensation, removal, &c. It may be well to incidentally mention here that a master has a right over against the servant through whose negligence he has had to pay, but I cannot find any case under the Act where he has availed himself of it. The adverse verdict against him will usually be conclusive against the servant as to the amount he has had to pay, but not as to the servant's negligence.

Limit of time for recovery of compensation.

Section 4.—An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks and the action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within twelve months from the time of death: provided always that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

Mode of serving notice of injury.

Section 7 (*e*).—Notice in respect of an injury under this Act shall give the name and address of the person

(*e*) I have put sect. 6 later on in order to keep together sects. 4 and 7, one of which treats of notice being required, and the other of the formalities of such notice.

Canadian Notes.

Workmen's Compensation for Injuries Act sect. 9.

NOTICE OF ACTION.

Limit of time for recovery of compensation.

9. Subject to the provisions of sects. 13 and 14 an action for the recovery, under this Act, of compensation for an injury shall not be maintainable against the employer of the workman, unless notice that injury has been sustained is given within twelve weeks, and the action is commenced within six months, from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death; provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action, if the judge shall be of opinion that there was reasonable excuse for such want of notice.

Sect. 13. Form and service of notice of injury.

13.—(1.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and

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Canadian Notes.

(2.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(3.) The notice may also be served by post, by a registered letter addressed to the person on whom it is to be served, at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(4.) Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

(5.) The want or insufficiency of the notice required by this section, or by sect. 9 of this Act, shall not be a bar to the maintenance of an action for the recovery of compensation for the injury if the Court or judge before whom such action is tried, or, in case of appeal, if the Court hearing the appeal is of opinion that there was reasonable excuse for such want or insufficiency, and that the defendant has not been thereby prejudiced in his defence.

(6.) A notice under this section shall be deemed sufficient if in the form or to the effect following:—

To A. B., of *(here insert employer's address)*,

or,

To the Co. *(or as the case may be)*.

Take notice that on the day of , 19 , C. D., of *(insert address of injured person)*, a workman in your employment, sustained personal injury *(add,* of which he died, *if such be the case)*, and that such injury was caused by *(state shortly the cause of injury, e.g.,* the fall of a beam*)*.

Date .

Yours, &c.,
X. Y.

Workmen's Compensation for Injuries Act.

Cases under sects. 9 & 13.

Sufficiency of.]—Solicitors for the plaintiff, before action, wrote as follows to the defendants: "We have been consulted by Mr. J. Cox concerning injuries sustained by him while in your employ, by which he lost his left hand. We have received instructions to commence an action against you for damages unless the matter is satisfactorily settled without delay. If you intend contesting this suit kindly let us have the address of your solicitors, who will accept service of process on your behalf." Held, that this was sufficient notice of action to satisfy the requirements of 49 Vict. c. 28, s. 7 and s. 10 (O.). (Workmen's Compensation Act, R. S. O. 1897, c. 160, sects. 9 and 13; *Stone* v. *Hyde*, 9 Q. B. D. 76, followed; *Cox* v. *Hamilton Sewer Pipe Co.*, 14 O. R. 300.)

Signature—Necessity for.]—A notice of action under the Workmen's Compensation for Injuries Act does not require to be signed or to be on behalf of anyone. (*Mason* v. *Bertram*, 18 O. R. 1; *Smith* v. *McIntosh*, 13 O. L. R. 118.)

Cases under sect. 14.

Notice of objection—Pleading.]—The provisions of sect. 14 of the Workmen's Compensation for Injuries Act (57 Vict. c. 30 (O.), now R. S. O. 1897, c. 160), are

shall be served on the employer, or if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business; and if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy and that the defect or inaccuracy was for the purpose of misleading.

Canadian Notes.

Workmen's Compensation for Injuries Act.

Cases under sect. 14.

not complied with merely by pleading that the notice of action relied on by the plaintiff is defective, or that notice of action has not been given. The defendant must give formal notice of his objection not less than seven days before the hearing of the action if he intends to rely upon it. (*Cavanagh* v *Park*, 23 A. R. 715.)

To state in the defence that notice of the accident has not been given, and that the defendants intend to rely on that defence, is not sufficient. Formal notice of the objection must be given in accordance with the provisions of sect. 14. (*Cavanagh* v. *Park*, 23 A. R. 715, applied; *Wilson* v. *Owen Sound Portland Cement Co.*, 27 A. R. 328.)

Notice under the Act, except in case of death, is a condition precedent to recovering (*e*), and it must be in writing, and the Courts cannot waive its being given. In *Moyle* v. *Jenkins*, 8 Q. B. D. 116, the plaintiff, a miner, had his arm shattered by an explosion of dynamite. He was taken to the hospital. The defendant visited him; the matron wrote saying he was doing well, but had to have his arm taken off, but yet he could not recover, no notice in writing had been given; more, a notice should conform to the requirements of sect. 7. In *Keen* v. *Millwall Dock Co.*, 8 Q. B. D. 482, a workman, on the day he was injured, made a verbal report of such injury to his employers' inspector, who took down the details in writing and sent them to the employers' superintendent. Afterwards the plaintiff's solicitor wrote, "I am instructed by George Keen, of 136, Rhodeswell Road, Limehouse, to apply to you for compensation for injuries received at the dock, particulars of which have already been communicated to your superintendent." Held, no sufficient notice, as it did not refer to particulars in writing, and that it did not come within the saving clause providing for notices merely defective.

But the notice need not be in technical language; it is enough if it substantially conveys to the mind of the person to whom it is given the name and address of the person injured, and the cause and date of the injury. In *Stone* v. *Hyde*, 9 Q. B. D. 76, a letter from the plaintiff's solicitor gave only the date of the injury, and stated that the plaintiff was and had for some time past been under treatment at a hospital for injury to his leg. Held, having regard to the saving clause, it might pass. Further, it was directed that as a judge's opinion was subject to appeal, he ought to set out in his notes those facts on which his opinion was based. So in *Clarkson* v. *Musgrave*, 9 Q. B. D. 396, the plaintiff's notice stated she was injured in consequence of the defendant's negligence in leaving a certain hoist in their warehouse unprotected, whereby her foot was caught in the casement of the hoist and crushed. At the trial the jury found the cause of the accident was the negligence in allowing the plaintiff, a young girl, to go into the hoist alone. Held, notice sufficiently stated the cause of the injury (*f*).

(*e*) *Clarkson* v. *Musgrave*, 9 Q. B. D. 396.

(*f*) So in *Thompson* v. *Robertson*, 1884, 12 R. 121, the wife of a

In *Carter* v. *Drysdale*, 12 Q. B. D. 91, the date was omitted, but the judge at the trial found it was not for the purpose of misleading, and it was held a defect that could be cured. So in *Beckett* v. *Manchester Corporation*, 52 J. P. 346, the omission of address and date was not held fatal; and in *Previdi* v. *Gatti*, 58 L. T. 762, where the letter was not registered but was acknowledged, and where the date of the accident was stated as August 8th instead of August 9th, and the address and cause of injury omitted, it was also held good as a notice for the same reason. More, the Court held its having been posted on the 19th August was evidence of its having been received on the 20th. As regards delivery, this is in accordance with the Scotch case, *McGoran* v. *Tancred*, 1886, 13 R. 1033, where it was held if a notice be *de facto* received its mode of delivery is not material. But if sent by post on such a day that it could not possibly be received in time it will be bad, *McDonagh* v. *McLellan*, 1886, 13 R. 1800. In another case, *Rathbone* v. *Ross*, 35 S. J. 208, a workman who had been injured gave a notice addressed to Mr. Wm. Ross, but as a matter of fact Mr. Ross had been dead six months, and his business was being carried on by his trustee. Held, it was sufficient. In case of death of the plaintiff, reasonable excuse for not sending notice is a question for the judge at the trial, *Trail* v. *Kelman*, 1887, 15 R. 4.

On the other hand, if the defendant wishes to avail himself of the want of notice, it being a special statutory defence, he must file the usual five days' notice required by Order X. r. 10, County Court Rules, 1889, *Conroy* v. *Peacock*, 1897, 2 Q. B. 6.

workman wrote to his employers as follows, 5th December, 1883:—"Dear sir,—I find I shall need some more money, and will you please oblige me with 10s. It is now five weeks since Adam got his accident. His jaw is so badly smashed that he will never be the same man again. Adam has been advised to get damages from you." Held, sufficient notice.

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Workmen's Compensation for Injuries Act, sect. 14. Defence of want of notice, or not the plaintiff's employer.

If the defendant in any action against an employer for compensation for an injury sustained by a workman in the course of his employment intends to rely for a defence on the want of notice or the insufficiency of notice, or on the ground that he was not the employer of the workman injured, he shall, not less than seven days before the hearing of the action, or such other time as may be fixed by the rules regulating the practice of the Court in which the action is brought, give notice to

Again, the action must be commenced within six months from the occurrence of the accident. This condition cannot be waived. In *Clark* v. *Adams*, 1885, 12 R. 1092, notice had been given by a former agent who had died. A new agent was ignorant of the notice, and brought action at Common Law and failed. Then he learnt notice had been given, and asked leave to amend the claim so as to bring it under the statute. Six months having elapsed, it was held not competent to allow the amendment.

Trial of actions.

Section 6.—(1.) Every action for recovery of compensation under this Act shall be brought in a County Court, but may upon the application of either plaintiff or defendant, be removed into a superior Court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed.

(2.)—Upon the trial of any such action in a County Court before the judge without a jury one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

Workmen's Compensation for Injuries Act, sect. 14—*continued.*

Canadian Notes.

the plaintiff of his intention to rely on that defence, and the Court may, in its discretion, and upon such terms and conditions as may be just in that behalf, order and allow an adjournment of the case for the purpose of enabling such notice to be given; and, subject to any such terms and conditions, any notice given pursuant to and in compliance with the order in that behalf, shall, as to any such action, and for all purposes thereof, be held to be a notice given pursuant to and in conformity with sects. 9 and 14 of this Act.

Sect. 15. Particulars of demand.

15. In an action brought under this Act the particulars of demand or statement of claim shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed; and where the action is brought by more than one plaintiff, the amount of compensation claimed by each plaintiff, and when the injury of which the plaintiff complains shall have arisen by reason of the negligence, act or omission of any person in the service of the defendant, the particulars shall give name and description of such person.

Sect. 16. Application for appointment of assessors.

16.—(1.) Upon the trial of an action for recovery of compensation under this Act before a judge without a jury, one or more assessors may be appointed by the Court or judge for the purpose of ascertaining the amount of compensation; and the remuneration, if any, to be paid to such assessors shall be fixed and determined by the judge at the trial.

(2.) Any person who shall, as hereinafter provided, be appointed to act as an assessor in such action, shall be qualified so to act.

(3.) In such action, a party who desires assessors to be appointed shall, ten clear days at least before the day for holding the Court at which the action is to be tried,

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors,

Canadian Notes.

Workmen's Compensation for Injuries Act, sect. 16—*continued.*

file an application stating the number of assessors he proposes to be appointed, and the names, addresses and occupations of the persons who may have expressed their willingness in writing to act as assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent to his application.

4.) When the application for the appointment of assessors has been made by one party to an action only, he shall, eight clear days at least before the day for holding the Court at which the action is to be tried, serve a copy of the application, so filed, upon the other party, who may then either file an application for assessors, or file objections to one or more of the persons proposed.

5.) An application for the appointment of assessors may be in the form following, or to the like effect, namely:—

In the *(describing the Court)*.

"THE WORKMEN'S COMPENSATION FOR INJURIES ACT."

BETWEEN *Plaintiff*,

and

Defendant.

The plaintiff (*or* defendant) applies to have an assessor (*or* assessors) appointed to assist the Court in ascertaining the amount of compensation to be awarded to the plaintiff, should the judgment be in his favour, and he submits the names of the following persons, who have expressed their willingness in writing to act as assessors should they be appointed.

Here set out the names, addresses and occupations of the persons above referred to.

If the other party consents to the appointment, add the following):—The defendant (*or* plaintiff) consents to the appointment of any of the persons above named to act as assessors in this action, as appears by his consent thereto filed herewith.

Dated this day of .

A. B.

The above-named plaintiff (*or as the case may be*).

6. Where separate applications are filed by the parties, no objection to the persons proposed shall be made by either party, but the Court or judge may appoint from the persons named in each application, one or more assessor or assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

Sect. 17. Assessors in Divisional Court.

17. In case any such action is brought in a Divisional Court, the applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the clerk of the Court to the judge.

Sect. 18. Appointment by Court or judge.

18. Where application for the appointment of assessors is granted, the Court or judge shall appoint such of the persons proposed for assessors as by the Court or judge may be deemed fit, subject to the provisions contained in this Act.

Sect. 19. Additional assessors.

19. In such action, when an application for the appointment of assessors has been filed, the Court or judge may, at any time prior to the trial thereof, nominate one or more additional persons to act as assessors in the action. Where no application

Employers' Liability Act, sect. 6.

and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a County Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in the County Courts.

"County Court" shall, with respect to Scotland, mean the "Sheriff's Court," and shall, with respect to Ireland, mean "Civil Bill Court."

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party in the manner provided by, and subject to, the con-

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Workmen's Compensation for Injuries Act.

for assessors has been made, the Court or judge may appoint one or more persons to act as assessor or assessors in the action before or on the trial of the action.

Sect. 20. Where assessors do not attend at trial.

20. If at the time and place appointed for the trial all or any of the assessors appointed do not attend, the Court or judge may either proceed to try the action, with the assistance of such of the assessors, if any, as do attend, or may adjourn the trial generally or upon any terms which the Court or judge may think fit, or may appoint any person who may be available, and who is willing to act, and who is not objected to, or who, if objected to, is objected to on some insufficient ground, or the Court or judge may try the action without assessors.

Sect. 21. Deposit of assessor's fees.

21. Every person requiring the Court or judge to be assisted by assessors shall, at the time of filing his application, deposit therewith the sum of $1 for every assessor appointed, and such payments shall be considered as costs in the action unless otherwise ordered by the Court or judge. Provided that where a person proposed as an assessor shall have in writing agreed and consented that he will not require his remuneration to be so deposited, no deposit in respect of such person shall be required.

Sect. 22. By whom cost of additional assessors borne.

22. When an action is tried by the Court or judge with the assistance of assessors in addition to or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the judge or Court shall direct.

Sect. 23. Where trial does not take place.

23. If, after an assessor has been appointed, the action shall not be tried, the Court or judge shall have power to make an allowance to him in respect of any expense or trouble which he may have incurred by reason of his appointment, and direct the payment to be made out of any sum deposited for his remuneration.

Sect. 24. Duty of assessors.

24. The assessors shall sit with and assist the Court or judge, when required, with their opinion and special knowledge, for the purpose of ascertaining the amount of compensation, if any, which the plaintiff shall be entitled to recover.

ditions prescribed by sect. 9 of the Sheriff's Court (Scotland) Act, 1877. 40 & 41 Vict. c. 50.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties and in respect of different injuries.

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Workmen's Compensation for Injuries Act.

Sect. 25. Consolidation of actions.

25.— 1.) When several actions shall be brought under this Act against a defendant in the same Court in respect of the same negligence, act, or omission, the defendant shall be at liberty to apply to the judge that the said actions shall be consolidated.

(2.) Applications for consolidation of actions shall be made upon notice to the plaintiffs affected by such consolidation.

Sect. 26. Staying several actions to abide result of one.

26. — 1.) In case several actions shall be brought under this Act against a defendant in the same Court in respect of the same negligence, act, or omission, the defendant may, on filing an undertaking to be bound so far as his liability for such negligence, act, or omission is concerned, by the decision in such one of the said actions as may be selected by the Court or judge, apply to the Court or judge for an order to stay the proceedings in the actions other than in the one so selected, until judgment is given in such selected action.

(2.) Applications for stay of proceedings shall be made upon notice to the plaintiffs affected by stay of proceedings or *ex parte*.

Sect. 27. Terms of consolidation or stay.

27. Upon the hearing of an application for consolidation of actions or for stay of proceedings, the Court or judge shall have power to impose such terms and conditions, and make such order in the matter, as may be just.

Sect. 28. Varying order.

28. If an order shall be made by a Court or judge upon an *ex parte* application to stay proceedings, it shall be competent to the plaintiffs affected by the order to apply to the Court or judge (as the case may be), upon notice or *ex parte*, to vary or discharge the order so made, and upon such last-mentioned application such order shall be made as the Court or judge shall think fit; and the Court or judge shall have power to dispose of the costs occasioned by such order as may be deemed right.

Sect. 29. Removal of stay.

29. In case a verdict in the selected action shall be given against the defendant, the plaintiffs in the action stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their damages and costs.

Sect. 30. Damages to be separately assessed.

30. Where two or more persons are joined as plaintiffs under sect. 25, and the negligence, act, or omission which is the cause of action shall be proved, the judgment shall be for all the plaintiffs, but the amount of compensation, if any, that each plaintiff is entitled to shall be separately found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person, and in such manner as the Court or judge thinks fit; should the defendant fail to pay the several amounts of compensation and the costs awarded in the action, execution may issue as in an ordinary action, and should the proceeds of the execution be insufficient, after deducting all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount awarded to the respective plaintiffs, to the total amount realised after the deduction of all the costs of the action as aforesaid.

Sub-sect. 1.—In *Monday* v. *Thames Ironworks Co.*, 10 Q. B. D. 59 (*g*), it was held no reason for removal that the plaintiff had given a defective notice and wished to consolidate his action under the Act with one he had commenced in the High Court on his master's Common Law liability. Nor is it a reason for removal that more than 50*l.* is likely to be recovered, *McEvoy* v. *Waterford S. S. Co.*, 16 L. R. Ir. 291. Sect. 39 of the C. C. Act, 1856 (similar to sect. 62 of the C. C. Act, 1888), entitles the defendant in any action of *tort*, when the claim exceeds a certain amount, and on certain conditions as to giving security for costs, &c., to remove the case to the High Court. Held, by the Court of Appeal, this section did not apply to actions under the Act, *Claxton* v. *Lucas*, 14 Q. B. D. 905.

In *Bates* v. *Warner*, 5 T. L. R. 582, C. A., where the defendant alleged he would not get a fair trial in the County Court, and undertook to pay all extra costs incurred whether he won or lost, and after Lord Coleridge had been communicated with and had

(*g*) Otherwise in *Larbey* v. *Greenwood*, Times, July 23, 1885, where a claim under Employers' Liability Act, 1880, was removed by *certiorari* for purpose of having a Common Law claim added to it.

Workmen's Compensation for Injuries Act.

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Sect. 31. Admissions by notice.

31. A defendant may by notice to the opposite party, to be given or served at least six days before the day appointed for the trial of the action, admit the truth of any statement of his liability for any alleged negligence, act, or omission, as set forth or contained in the plaintiff's statement or particulars of claim in the action, and after such notice given the plaintiff shall not be allowed any expense thereafter incurred for the purpose of proving the matters so admitted.

Sect. 32. Where time expires on a holiday.

32. When the time for doing any act, taking any proceedings, or giving any notice under or required by this Act expires on a holiday, such act, or proceeding, or notice shall, so far as regards the time of doing, taking or giving the same, be held to be duly and sufficiently done, taken or given, if done, taken or given on the day next following which is not a holiday.

Sect. 33. Forms and rules.

33. In an action brought in any Court to recover compensation under this Act, the forms and methods, and the rules and orders in force in the Court shall, subject and save as otherwise provided by the terms and provisions of this Act, apply to and regulate all matters of pleading, practice and procedure in such action, and notwithstanding anything in this Act contained, the forms and method, and the pleadings, practice and procedure in any such action, shall conform to and be regulated by any rules or orders in that behalf hereafter lawfully and duly made or prescribed with respect to actions brought in any such Court.

expressed his willingness to hear the case at the Chelmsford Assizes, he was allowed to have it removed (*h*).

Few special rules have been made for procedure under the Act, and this is regulated by the ordinary practice of the Court. For this reference must be made to the County Court Annual Practice. As to rules, &c., Order XLIV. of the County Court Rules of 1903 deals with what is special to the Act. It provides (*inter alia*) :—

(1.)—*A summons in an action brought under the Employers' Liability Act*, 1880, *shall, in order to ensure its service, be delivered to the bailiff where it is to be served in the home district thirty-five clear days at least, and where it is to be served in a foreign district thirty-eight clear days at least, before the return day, and it shall in either case be served thirty clear days at least before the return day thereof.*

(2.)—*Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint whatever the amount claimed may be, and a copy thereof shall be forthwith sent to the judge* (*i*).

(3.)—*The particulars of demand shall state in ordinary language the cause of the injury and the date at which it was sustained and the amount of compensation claimed, and where the action is brought by more than one plaintiff the amount of compensation claimed by each plaintiff; and where the injury of which the plaintiff complains is alleged to have arisen by reason of the act or omission of any person in the service of the defendant, the particulars shall give the name and description of such person* (*j*).

(*h*) So also in *Hooper* v. *Holme & King*, 12 T. L. R. 537, where trial in County Court was set aside for misdirection.

(*i*) This will mean an extra copy for the judge. Order LIV. r. 13, requires as many copies of particulars to be filed as there are defendants, with the names, addresses, and descriptions of the parties; and by Order VII. r. 4, they are to be annexed to the summons and shall be deemed to be part thereof.

(*j*) By Order VI. r. 1, the particulars must specify the cause

(4).—*Notice of demand for a jury shall be given in writing to the registrar, according to the form in the Appendix, fifteen clear days at least before the return day, and the registrar shall forthwith give notice thereof to the other party, according to the form in the Appendix; and the summonses to the intended jurors shall be delivered to the bailiff forthwith.*

In addition to the foregoing rules there are a number of others under the same Order regulating the practice when assessors are called. They do not seem to have ever been used; there are no decisions on them, and if required they can be found in the current rules of practice. Besides these, there are one or two other rules interspersed through the general rules, but chiefly relating to costs. By these a slight increase in fees is allowed to solicitors attending without counsel, and a special allowance for preparing for trial. So when there is no local bar in the Court town, or within twenty miles, an extra fee of 2*l.* 4*s.* 6*d.* may be allowed to counsel engaged, as also a fee of 1*l.* 3*s.* 6*d.* or 2*l.* 4*s.* 6*d.*, as the case may be, for settling particulars or interrogatories. (See Order L. A. 7.)

But it is without the scope of this work to deal with the practice. It is a large subject, changing from time to time, and with more than one pitfall for the unwary, and, above all, exhaustively dealt with in the "Annual Practice of the County Court," now brought out year by year. One matter, however, I will here draw attention to, namely, no appeal can be brought on any point unless the point has been taken at the trial in the County Court, and a note to that effect made by the judge (*k*). A possible roundabout way of remedying such slip is to apply to the County Court judge for a new trial, and raise such point, and on his refusing the application, the appeal can be prosecuted according to the ordinary practice. *Handley* v. *London, &c. Assurance Co.*, (1902) 1 K. B. 350.

of action, as well as the pecuniary or other claim sought to be established.

(*k*) *Smith* v. *Baker*, (1891) A. C. 325; *Clarkson* v. *Musgrave*, 9 Q. B. D. 386. Where from the nature of the case a proper note is impossible to be made, a shorthand note may sometimes be allowed, as in *Barber* v. *Burt*, (1894) 2 Q. B. 137, where the judge misdirected the jury in his summing-up.

The following is a form of particulars which, I trust, may be useful:—

No. of plaint.

In the County Court of
Holden at

Between A. B. . . . . *Plaintiff,*
and
C. D. . . . . *Defendant.*

THE EMPLOYERS' LIABILITY ACT, 1880.

Particulars of Demand.

1.—The plaintiff [*in case of death*, says that Y. Z., late of *give address*] was on the day of 19 a workman in the employ of the defendant, and on that day when at work [*give a short narrative of where and at what he was working and how the accident came about*] and by reason of such [*fall, blow, or as the case may be*] he has sustained personal injuries [*describe such injuries*], and has suffered much pain, and has incurred, and will incur, much expense and loss on account thereof, and the plaintiff says that such injuries were caused him:—

(1.) By reason of a defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the defendant, namely [*state the defect and how such defect directly caused the accident*], and such defect arose from or was not discovered or remedied owing to the negligence of the defendant, or of E. F. [*give his description*], or some other person in the service of the defendant and entrusted by him with the duty of seeing that the ways, works, plant, or machinery were in proper order.

(2.) By reason of the negligence of J. K., who was in the service of the defendants as their [*describe his position*], and was a person in superintendence, and whilst in the exercise of such superintendence, namely [*state facts relied on, and their connection with the accident*].

(3.) By reason of the negligence of L. M., who was in the service of the defendants as a [*describe his position*], and was a person to whose orders or directions at the time of such injury he was bound to conform, and did conform, and that his injuries resulted from his having so conformed, namely, in ordering him to [*state orders, and their connection with the accident*].

(4.) By reason of the act—or omission—of N. P., who was in the service of the defendant as [*state occupation*], done—or made—in

obedience to the rules or bye-laws of the defendant, namely [*describe act or omission, and set out the rule or bye-law relied on*] (*l*).

4a. By reason of the act—or omission—of N. P., who was in the service of the defendant as [*state occupation*], done—or made—in obedience to particular instructions given him by R. S. [*state his occupation or position*], who was a person delegated with the authority of the defendant in that behalf, namely [*state act or omission of N. P., and the instructions given him by R. S.*].

(5.) By reason of the negligence of T. V., who was in the service of the defendant as a [*state occupation*], and had charge or control of the signal, points, locomotive engine, or train [*or as the case may be*] upon the railway of the defendant, namely [*state facts relied upon*].

II.—The following are particulars of the loss and expenses sustained by the plaintiff by reason of the said injuries:—

Loss of week's wages from the [*date of accident*] to the date hereof, at £ per week .....
Loss of week's wages for overtime worked with X. Y. [*give address*] between the same dates, at *s.* per week (*m*) .....
Other losses, if any .....
Paid expenses—
Doctor .....
Nurse .....
Extra nourishment .....
Journey to seaside, lodgings, &c. .....
Other items actually incurred .....

£

The plaintiff claims £ [*the aggregate of three years' average wages of a workman in a similar employment*].

Dated this day of 19 .

(*Signed*) *n*
Solicitor for the above-named plaintiff, who will accept service of all proceedings on his behalf at his office [*give address*].

To the Registrar of the Court
and to C. D. the defendant.

(*l*) See remarks on this sub-section, p. 51.
(*m*) *Bartick* v. *Head*, 53 L. T. 909.
(*n*) As to such signature, see Order VI. r. 9.

In case of death the above form can be readily altered, but this further clause must be added:—

III.—This action is brought by the plaintiff as the executor [*or as the case may be*] of the said Y. Z., deceased, for the benefit of E., the wife, and W., M., and D., the children of the said Y. Z., deceased. Particulars pursuant to statute are delivered herewith.

Particulars under Lord Campbell's Act (9 & 10 Vict. c. 93), s. 4, should be attached, and should give the facts as to the names, ages, and relationship to the deceased of those claiming, as well as the pecuniary advantage they received, or were likely to receive, from him had he not been killed (1).

In settling the above form my object has been to draw attention to all the material statemen[illegible]he particulars should contain (*o*). The practitioner will re[illegible]pt it to the special circumstances of his case. He shoul[illegible]mber that it is most desirable to claim under as many heads a[illegible]ossible, even though some may not be very applicable. There may be a good cause of action, but it does not follow that even judges will take the same view of what that cause of action is; and then evidence as given in one's instructions by no means turns out identical with what is proved at the trial. The result may perhaps be a draft rather longer than absolutely necessary, and neither very good English nor perfect logic, but it may save the expense of a new trial and amendments at the cost of the plaintiff. *Vide Willett* v. *Watts*, (1892) 2 Q. B. 92.

In some cases particulars of loss or expenses are not given until a summons for particulars is taken out by the defendant, but it seems to me desirable they should be included. In giving them care should be taken there is no exaggeration. Nothing is more fatal. If a plaintiff exaggerates in what a jury can test, they will find he has equally exaggerated in what they cannot test. If he tries to recover for chickens he could never have eaten, the jury will also believe he is trying to recover for injuries he has never sustained.

(*o*) It will be observed it only covers a master's statutory liability, but if the draughtsman likes to allege personal negligence throughout, in addition, no harm will be done, but see p. 60.

Canadian Note.

See an Act respecting Compensation to the Families of Persons Killed by Accident, R. S. O. 1[illegible], and *Bertram et al.*, 18 O. R. 1, and *Curran* v. *G. T. R'y.*[illegible].

Employers' Liability Act, sect. 8. Definitions.

Section 8.—For the purposes of this Act, unless the context otherwise requires—

The expression "person who has superintendence entrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour (*p*).

The expression "employer" includes a body of persons corporate or unincorporate (*q*).

38 & 39 Vict. c. 90.

The expression "workman" means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies.

In the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), s. 10, a workman is thus defined:—

The expression "workman" does not include a domestic or menial servant, but save as aforesaid means any person who being a labourer, servant in husbandry, journeyman artificer, handicraftsman, miner or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be expressed or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

And sect. 13 of the same Act enacts:—

This Act shall not apply to seamen or to apprentices to the sea service.

Nor does it apply to apprentices paying a premium of more than 25*l.* nor to servants of the Crown, as the Crown is never included unless specifically named, *Attorney-General* v. *Hill*, 2 M. & W. 160.

By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1, in all Acts after 1850 words importing the masculine gender shall include

p) See *ante*, p. 19.

q) A company acts by its directors acting in their capacity of directors, but their manager is only their servant and fellow-servant with the other employees of the company. It does not change the position that such manager has been appointed in pursuance of an Act of Parliament to that effect. *Howells* v. *Landore Steel Co.*, L. R. 10 Q. B. 62. It does not include a mine owner where a workman is employed by an independent contractor, merely because he has a statutory control over his mine, *Marrow* v. *Flimby Coal Co.*, 1898 2 Q. B. 588; and *Fitzpatrick* v. *Evans*, 17 T. L. R. 253.

females unless a contrary intention appears. It is a question of fact for the jury whether a man is a workman or not within the definition, *Pearce* v. *Lansdowne*, 62 L. J. Q. B. 441, though perhaps the Court in some cases may find a difficulty in explaining to them the meaning to be applied to the word "menial." In Dr. Johnson's Dictionary we find "menial" defined as, "Belonging to the retinue or train of servants;" and it is derived from the Saxon "meiny," "many," or "mani," or the old French "mesnie." The illustration he gives is:—

> "Two *menial* dogs before their master pressed:
> Thus clad, and guarded thus, he seeks his Kingly guest."
> *Dryden's Aeneis.*

"Swift," he says, "seems not to have known the meaning of this word."

> "The women attendants perform only the most menial offices."—*Gulliver's Travels.*

Other definitions have been attempted, but this seems to most harmonize with the decisions in some early cases where its meaning was involved. Thus, a gardener has been held to be a menial servant, *Johnson* v. *Blenkinsop*, 5 Jur. 870; so also a head gardener, receiving a salary of 100*l.* a year, with the right to take apprentices, *Nowlan* v. *Ablett*, 2 Cr. M. & R. 5; and a huntsman, *Nicoll* v. *Greaves*, 33 L. J. C. P. 259; and in a recent case a potman in a public-house has also been so held. *Pearce* v. *Lansdowne* (*supra*).

Again, the following have been held not to be workmen within the definition of the section, because not engaged in manual labour:—A grocer's assistant, *Bound* v. *Lawrance*, L. R., (1892) 1 Q. B. 226; the driver of a tramcar, *Cook* v. *North Metropolitan Tramways Co.*, 18 Q. B. D. 683; and the conductor of an omnibus, *Morgan* v. *London General Omnibus Co.* 13 Q. B. D. 832, C. A.; but the driver of a cart and horse used by wharfingers is a workman within the Act, *Yarmouth* v. *France*, 19 Q. B. D. 647.

The following have been held to be workmen within the Act:—A potter's printer, paid by the piece, and employing and paying assistants, *Grainger* v. *Aynsley*, 6 Q. B. D. 182; a slater, paid by the piece, using his own tools and the materials of his master, *Stuart* v. *Evans*, 19 L. T. 138; and a fireman on a steam canal barge is not a seaman within the excepting clause 13, and is within

the meaning of the section, *Oakes* v. *Monkland Steam Iron Co.*, 1884, 11 R. 579.

Commencement of Act.

Section 9.—This Act shall not come into operation until the first day of January one thousand eight hundred and eighty-one, which date is in the Act referred to in the commencement of this Act.

Short title.

Section 10.—This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December one thousand eight hundred and eighty-seven, and to the end of the then next Session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

Canadian Notes.

Sect. 13, sub-sect. 5, Workmen's Compensation Act Ont., identical with sect. 12, sub-sect. 5, of the British Columbia Act, R. S. B. C. 1897, c. 69.

"The object of the notice is to protect the employer against stale or manufactured or imaginary claims, and to give him an opportunity while the facts are recent of making inquiry into the cause and circumstances of the accident. The several clauses which bear upon the subject are very loosely fitted together, but the stringency of the original provision has been much relaxed, and the injured workman is evidently the first object of the Legislature's care." *Armstrong* v. *Canada Atlantic R. W. Co.*, 4 O. L. R. 760, Osler, J. A. The proper time to show prejudice is while the question of reasonable excuse is still open. *Lowe* v. *McArthur et al.*, 9 B. C. R. 117.

Omission of statutory notice—Dominion Railway Act—Damages—Limitation of amount—Actions.] Sect. 289 of the Dominion Railway Act, 51 Vict. c. 29, giving to any person injured by the failure to observe any of the provisions of the Act a right of action "for the full amount of damages sustained" is *intra vires*, and the limitation of the amount mentioned in the Workmen's Compensation for Injuries Act does not apply to an action by a workman or his representatives under this section. Where a statutory direction imposed upon an employer has not been observed, it is no defence that its non-observance is due to the negligence of a fellow servant of the person injured. The widow and child of a person killed in consequence of the defendant's negligence may, when letters of administration to his estate have not been issued, bring an action under R. S. O. 1897, c. 166, without waiting six months. The Court, thinking that the damages awarded by the jury in an action for causing death were excessive, ordered that there should be a new trial unless the plaintiffs accepted a reduced amount. *Curran* v. *Grand Trunk R. W. Co.*, 25 A. R. 407, and note, p. 75.

Canadian Notes.

AN ACT TO AMEND THE LAW WITH RESPECT TO COMPENSATION OF WORKMEN.

1. This Act may be cited as "The Workmen's Compensation for Injuries Act, 1899." (Ontario Statutes, 62 Viet. *c.* 18.)

Sect. 2. Interpretation.

2. In this Act the word "claimant" shall include the word "plaintiff" and the word "respondent" shall include the word "defendant," and in the Workmen's Compensation for Injuries Act the word "plaintiff" shall include the word "claimant" and the word "defendant" shall include the word "respondent," and the words "suit," "action" or "proceeding" when mentioned in the Workmen's Compensation for Injuries Act shall include the word "arbitration," and the word "Court" or "Judge" shall include the word "arbitrator."

Sect. 3. Burden of proof.

3. When the machinery or other plant or works of or in a factory or any part of such machinery, plant or works, through or by reason of which the injury complained of was inflicted, or occasioned or alleged to have been inflicted or occasioned, is or are by the *Ontario Factories Act* or any other Act of the Provincial Legislature, or of the Parliament of Canada, required to be covered, guarded, protected or suitably enclosed in whole or in part:

(a) or is required by any of the Acts aforesaid to be of a special or particular kind or quality or to be kept in a particular or specified state or condition;

(b) or where dangerous structures or places or openings in or in connection with a factory are required by law to be kept securely guarded or protected or suitably enclosed as far as practicable, or to be kept in some particular state or condition, or that facilities for so keeping them or any of them shall be provided;

(c) or where any part of a railway or railway track or railway bridge or other structure is required to be of a certain kind or character, or to be constructed or kept by the company in any particular or specified way or manner as provided or contemplated by *The Railway Accidents Act*, or by *The Workmen's Compensation for Injuries Act*, or by any other Act of the Provincial Legislature, or by the Parliament of Canada;

then upon any trial or arbitration under *The Workmen's Compensation for Injuries Act* or this Act for the recovery of damages for injuries to a workman arising out of the neglect or alleged neglect on the part of the person or company required to keep the said machinery, buildings, structures, dangerous places, and railway track or structures in such a state, condition or manner or of the kind, character, or quality as aforesaid and as is provided or contemplated by the said Acts respectively, and it is or becomes material to the issue on the trial or arbitration, the onus of proving that the same were so kept or in such condition or that facilities were provided for so keeping the same as the case may be or as the Act or Acts require, shall be upon the party to the action whose duty it was under any of the said Acts to so keep the said machinery, works, plant, dangerous places or any part thereof, or railway tracks or works and structures or any part thereof as by the said Acts or any of them is required or provided.

Sect. 4. Settlement of claims under R. S. O. 1897, *c.* 160, by arbitration.

4. Notwithstanding anything in *The Workmen's Compensation for Injuries Act*, chapter 160 of the Revised Statutes, 1897, contained, except where the claim is in respect of an injury resulting in death, all claims for damages under the said Act may be disposed of by arbitration as herein provided.

Sect. 5. Venue for proceedings under Act.

5. Proceedings under this Act by way of arbitration shall be begun and carried on in the county where the accident happened or the injury was occasioned.

Canadian Notes.

Sect. 6. Applications to judge of County Court instead of judge of High Court in chambers.

6. If the suit or action is begun in the County Court, all applications may be made to the judge of the County Court instead of a judge of the High Court in chambers, and the judge of the County Court shall have the same power and authority as a judge of the High Court in chambers in respect of such applications, but the respondent shall not be entitled, when notice of arbitration is given and the amount claimed is within the jurisdiction of the County Court, to apply for an order directing that the proceedings shall be by suit or action.

Sect. 7. Notice of arbitration.

7. 1) In case a workman claiming compensation for injuries under *The Workmen's Compensation for Injuries Act* and this Act desires to proceed by arbitration under this Act, he shall within four months from the date upon which such injuries were sustained serve a notice (Form 1) upon the person or persons whom he claims to be liable, stating that his claim will be submitted to arbitration unless notice of objection is given as hereinafter provided.

2) If an employer objects to an arbitration he shall within ten days after the service upon him of such notice serve notice (Form 2) that at a time therein named, which shall not be more than eight days from the date thereof, he will apply to a judge of the High Court in chambers for an order that any proceedings in respect of the said injuries shall be by action as heretofore and not by arbitration. The judge on hearing such application may in his discretion direct that proceedings are to be carried on by action on any of the following grounds:—

a) If he finds that difficult questions of law not already judicially determined are likely to arise during the proceedings, or

b) If it is made to appear that complicated questions of fact, difficult of determination, are likely to arise on the arbitration, and which should in his opinion be determined in an action and not by arbitration, or

c) If the county judge is for any reason or cause disqualified, and there is no junior judge.

3) The judge may by such order extend the time for commencing an action as he may deem proper. Unless notice of objection as aforesaid is given, within ten days after the service on him of a notice of arbitration under sub-section 1), the employer shall be deemed to consent to an arbitration, provided that where it is shown to the satisfaction of the judge that the failure to give notice of objection is due to mistake, inadvertence, or oversight, or that there are other sufficient grounds, he may upon such terms as may seem just, enlarge the time for giving such notice, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed as aforesaid.

Sect. 8. Application by defendant in action to have matter disposed of by arbitration.

8. Where proceedings are begun by action instead of by notice of arbitration, the defendant may apply to a judge in chambers for an order directing that the proceedings shall be taken and carried on by arbitration and not by suit or action. The judge to whom application is made, if he is of opinion that the cause or cause of action can be more conveniently disposed of by arbitration than by suit or action, and that the same should be disposed of by arbitration rather than by suit or action, shall so order, in which case no further proceedings shall be had in the suit or action, but proceedings may be initiated and carried on by way of arbitration. The judge may dispose of the costs of the suit or action up to the date of the order, or he may direct that such costs shall be in the discretion of the arbitrator.

Sect. 9. Commencement of action.

9. Either the issue of a writ or notice of arbitration under this Act shall be a sufficient commencement of the action and a sufficient compliance with section 9 of *The Workmen's Compensation for Injuries Act*, whether the proceedings are afterwards carried on by arbitration or by suit or action.

Canadian Notes.

10. Nothing in this Act contained shall dispense with the notice of injury required to be given under sections 9, 13 and 14 of *The Workmen's Compensation for Injuries Act*. Sect. 10. Notice of injury to be given under R. S. O. 1897, c. 160.

11.—(1) In case the proceedings are to be by way of arbitration the claimant shall obtain an appointment from the judge of the County Court of the county in which the injury was received, and shall serve a copy of such appointment upon the respondent, together with a notice (Form 3) of the time so appointed. The judge by the said appointment shall name a day, hour and place, for proceeding with the hearing, and such day shall be fixed with a view to as early a disposal of the case as appears practicable. Sect. 11. Arbitration proceedings.

(2) In case the claimant does not proceed with the arbitration with reasonable speed the respondent may obtain an appointment from the County Court Judge to have the case heard and disposed of at a time to be named in such appointment. The respondent shall serve a copy of the appointment on the claimant, and on proof of such service the judge may at the time so appointed proceed with the hearing or make such disposal of the matter as may appear just. Right of respondent to expedite proceedings.

12. Where an order is made directing that the liability of the respondent to pay compensation to the claimant shall be determined by action as heretofore, all proceedings upon the arbitration shall be stayed upon the filing of the order with the clerk of the County Court and service thereof upon the claimant. The claimant if he desires in such case to proceed shall do so by action in the usual way. Sect. 12. Proceedings to be stayed.

13. Within eight days after the notice to the respondent of the day upon which the arbitration will be proceeded with the respondent shall file with the clerk of the County Court his statement of defence Form 4, in which he may set up any defence which would be open to him upon the trial of an action in the High Court, and shall serve a copy thereof upon the applicant. Sect. 13. Statement of defence.

14.—(1) In case the County Court Judge is for any reason disqualified from acting, or in case he desires not to act, he may request some other County Court Judge to act for him, and the judge acting on such request shall have all the jurisdiction conferred by this Act; and no act of such judge shall be open to question on the alleged ground that he was not the proper judge to perform the duty or that the same had not been regularly or otherwise assigned to him or had not been performed at such request or by such directions as the law requires. Sect. 14. Judge of another county may act on request.

(2) When an application is made to a judge of the High Court in chambers under section 4, such judge shall have power to direct that a County Court Judge of another county shall hear the arbitration, and in such case the travelling expenses of the judge of such other county may be paid out of any moneys appropriated by the Legislature for that purpose.

15. No pleadings or documents in the nature of pleadings shall be necessary in case the matter is proceeded with by arbitration under this Act other than the notice of arbitration and the statement of defence hereinbefore mentioned. Sect. 15. Pleadings limited.

16.—(1) In any proceedings under this Act the judge of the County Court may compel the attendance of witnesses and the production of documents in the same manner and to the same extent as in an action in the County Court, and shall possess the same powers in respect of all such proceedings as he would possess in an action in the County Court, and the claimant or respondent shall have the same right to examine the opposite party for discovery or otherwise, and the judge shall have the same power to direct the examination of witnesses by commission as in an action in the County Court as aforesaid. Sect. 16. Witnesses and evidence.

Canadian Notes.

(2) Subpœnas for witnesses may be issued out of the County Court on præcipe as in ordinary cases.

Sect. 17. Employment of shorthand reporter.

17. In any case if the parties so desire or the judge so directs, the evidence may be taken by a shorthand writer. The cost of such shorthand writer shall be borne by the parties equally unless the judge otherwise directs, and copies of evidence shall be paid for on the scale allowed to special examiners in proceedings in the County Court.

Sect. 18. Referring questions of law.

18. The judge of the County Court may if he thinks fit submit any question of law for the decision of a judge of the High Court in chambers or single Court, and the decision of such judge on any question of law, so submitted, shall be final.

Sect. 19. Costs.

19.—(1) The costs of and incidental to the arbitration and proceedings connected therewith shall be on the scale allowed in actions in the County Court, and shall be subject to taxation in the same manner. Costs in all cases shall be in the discretion of the judge.

(2) The judge may fix the costs of arbitration or of any other proceedings before him as between the parties instead of directing taxation, and he may also fix the costs as between the solicitor of either party and his client on the application of either.

Sect. 20. Effect of award.

20. The judge of the County Court shall make his award in writing (Form 5), and upon the filing of the same with the clerk of the County Court it shall become and be a County Court judgment, and execution may be issued thereon in the same manner as on a judgment in an action.

Sect. 21. Agreement as to compensation.

21. When the amount of compensation payable under *The Workmen's Compensation for Injuries Act* has been ascertained by agreement between the parties a memorandum of such agreement shall be delivered or sent by registered letter to the clerk of the County Court, who shall, on being satisfied as to its genuineness, record such memorandum in a special register for a fee of $1, and thereupon such memorandum shall for all purposes become and be a County Court judgment and shall be enforceable as a judgment.

Provided that the judge of the County Court may at any time rectify such register.

Sect. 22. Duties of judge and officers of Courts.

22. The duties by this Act imposed upon the judge of the County Court and upon the clerk and other officers of such Court shall be part of their duties as officers of the County Court, and no fees shall be payable to the judge except a fee of $10 in connection with any arbitration, or to any officer of the Court in respect thereof other than the ordinary fees in a County Court action as for similar work, and any sum awarded or agreed upon as compensation shall be paid on receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him or to claim a lien on or to deduct any amount for costs from the said sum awarded except such sum as may be awarded by the judge of the County Court on an application (Form 6) made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation if the judge so directs.

Lien on sum awarded.

Sect. 23. Appeal.

23.—(1) Any party to an arbitration under this Act may appeal from the decision of the arbitrator to a Divisional Court of the High Court of Justice, and sections 50 to 57 of *the Revised Statute respecting County Courts* shall, so far as applicable, apply to such appeals.

(2) The Court shall also have power, on hearing any such appeal, to remit the matter for the reconsideration of the judge of the County Court.

Canadian Notes.

24.—(1) The judges of the Supreme Court and of the High Court respectively shall have the same authority to make rules of Court with respect to proceedings under this Act, as by sections 122 and 124 of *The Judicature Act* they have with respect to the High Court: and the judges authorised as mentioned in section 125 of that Act shall have the like authority. Sect. 24. Rules.

(2) Until provision is made in that behalf in any matters which are unprovided for by this Act, the rules of practice applicable to proceedings in the County Court shall, as nearly as may be, be followed. Practice in case unprovided for.

25. In an arbitration under this Act the claimant shall not be limited to the amount recoverable in a County Court action, but may recover the same amount as is provided in case of actions under *The Workmen's Compensation for Injuries Act*. Sect. 25. Amount recoverable. R. S. O. 1897, c. 160.

26. Nothing in this Act contained shall oblige a claimant to proceed by way of arbitration, but any claimant may bring an action if he deems fit. Sect. 26. Arbitration optional.

27. *The Arbitration Act* shall not apply to an arbitration under this Act. Sect. 27. Arbitration Act, R. S. O. 1897, c. 62, not to apply.

28. The forms appended to this Act, with such variation as may be necessary, may be used by any party to an arbitration. Sect. 28. Use of forms.

29. This Act shall, in so far as it may be necessary in order to enable the same to be carried into effect, be read with and as part of *The Workmen's Compensation for Injuries Act* when the latter Act is not inconsistent with the provisions of this Act. Sect. 29. Act to be read with R. S. O. 1897, c. 160.

FORM 1.

Notice of Arbitration by an Injured Workman with respect to the Compensation payable to him.

In the County Court of the County of .

In the matter of *The Workmen's Compensation for Injuries Act*, 1899.

Between A. B. . . . . *Applicant*,

and

C. D. & Co., Limited . . . *Respondents*.

Take notice, that A. B. proposes to submit to arbitration his claim for compensation under the said Act, in respect of personal injuries caused to him by accident arising out of and in the course of his employment.

If you object to an arbitration you are to notify A. B. of such objection within ten days from the service of this notice upon you, otherwise you will be deemed to have assented to such arbitration, and the same will be proceeded with at such time as may be appointed by the judge of the County Court of the County of . the arbitrator in this matter.

Particulars are hereto appended (or annexed .

PARTICULARS.

1. Name and address of injured workman.

2. Name, place of business and nature of business of respondents.

3. Nature of employment of workman at time of accident, and whether employed under respondents or under contractors with them. [*If employed under contractors, who are not respondents, name and place of business of contractors to be stated.*]

4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

Canadian Notes.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the twelve months previous to the injury, if the workman had been so long employed under the same employer, or, if not, during any less period during which he had been so employed.

8. Estimated average amount which the workman is able to earn after the accident.

9. Payments not being wages received from employer in respect of the injury during the period of incapacity.

10. Amount claimed as compensation.

11. Date of service of statutory notice of accident on respondents. [*A copy of the notice to be annexed.*]

12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the applicant.

Of his solicitor,

The names and addresses of the respondents to be served with this application.

Dated this day of .

Signed , Claimant,

or

, Claimant's Solicitor.

FORM 2.

Notice of Objection to Arbitration.

[*Heading as in Notice of Arbitration.*]

Take notice, that a motion will be made before the presiding judge in chambers at Osgoode Hall, Toronto [*or as the case may be*], on , the day of next, at the hour of o'clock in the forenoon, or so soon thereafter as the application can be heard, for an order directing that any proceedings in this matter be by action not by arbitration. The application is made on the following grounds:

[*Here state grounds.*]

FORM 3.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Notice of Arbitration.*]

Take notice, that the judge of this Court will proceed with the arbitration herein, at , on , the day of , at the hour of o'clock in the noon; and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

And further take notice, that if you write to disclaim any interest in the subject-matter of the arbitration, or consider that the particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge, or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject-matter of the arbitration, or stating in what respect the particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge, or on which

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you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge, and a copy for the applicant and for each of the other respondents, must be filed with the clerk of the Court five clear days at least before the day of .

If no answer is filed, and subject to such answer (if any), the particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To of .

Signed) . Claimant.

or

, Claimant's Solicitor.

FORM 4.

Answer by Respondents.

[*Heading as in Notice of Arbitration.*]

Take notice, that the respondents, C. D. & Co., Limited, intend, at the hearing of the arbitration, to give in evidence and rely on the following facts:—

That no notice of the alleged action was given to the respondents as required by section 13 of *The Workmen's Compensation for Injuries Act*.

That the claim for compensation with respect to the alleged accident was not made within twelve weeks from the occurrence of the accident;

Or,

That the respondents, C. D. & Co., Limited, deny their liability to pay compensation under the above-mentioned Act in respect of the injury to A. B., mentioned in the claimant's particulars, and that the grounds on which they deny their liability are:—

That the employment of the said A. B. was not an employment to which the said Act applies;

Or,

That the said injury to the said A. B. was not caused by accident arising out of and in the course of his employment;

Or,

Any other ground of defence.

FORM 5.

Award.

(In case of application by workman.)

[*Heading as in Notice of Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

1. I order that the respondents C. D. & Co., Limited, do pay to the claimant, A. B., the sum of as compensation for personal injury caused to the said A. B., on the day of , by accident arising out of and in the course of his employment as a workman employed by the said C. D. & Co. in [*state nature of employment*].

2. And I order that the said C. D. & Co. do pay to the claimant [*or as the case may be*] his costs of and incident to this arbitration, such costs in default of agreement between the parties as to the amount thereof to be taxed by the

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clerk on the scale of costs in use in the County Courts, and to be paid by the said C. D. & Co. to the clai[illegible] *as the case may be*] within fourteen days from the date of the certificate of the result of such taxation [*or if the judge fixes the costs or the parties agree upon them, this form to be adapted*].

Dated this day of .

Judge.

FORM 6.

Notice of Application for Determination of amount of Costs under sec. 16.

In the County Court of , holden at .

[*Title as in Award or Memorandum.*]

Take notice, that I intend to apply to the judge at , on . the day of , at the hour of o'clock in the noon, to determine the amount of costs to be paid to me as solicitor [*or* agent] for you, A. B., in the above-mentioned matter; and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you, the said A. B., in the above-mentioned matter and for consequential directions.

Dated this day of .

Applicant.

To the Clerk of the Court, and
To .

The Ontario Factories Act, R. S. O. 1897, c. 256, makes certain provision for the protection of persons employed in factories. The fines and penalties imposed and recovered under the Act are to be paid over to the Crown, and are not to be paid to the person injured through breach of the [illegible]isions of the Act. A person injured through such breach is not, however, precluded by reason of the penal remedies from maintaining an action grounded upon the negligence of the defendants in failing to perform the duties imposed by the Factories Act. (*Finlay* v. *Miscamble*, 20 O. R., per Ferguson, J., at pp. 39, 40.

In the case of *Finlay* v. *Miscamble* the plaintiff was employed by a sub-contractor to do work upon lumber after it had left the defendant's saw mill, and before it was shipped. To get some water to drink, the plaintiff went through the saw mill (in which he had no business in connection with his work), and, in returning, going out of his way through the mill to assist a workman who was in difficulty with some planks, he fell into an unguarded hole in which a saw was working, and was injured. Held, that under these circumstances he had no claim against the defendants either under the Ontario Factories Act or the Workmen's Compensation for Injuries Act. Although the plaintiff might be a person in the employment of the defendants within the meaning of the Ontario Factories Act, as amended, yet the duties prescribed by that Act can be enforced only by penalty; no civil liability is imposed on the owner of the factory if, apart from the statute, he would not have been liable at common law, except that the Act may be used for evidential purposes in regard to the place of the accident being dangerous and requiring protection (*e.g.*, for example, per Ferguson, J., s. 15, shows the hole in the case to have been), but here the defendants would not be so liable on account of the contributory negligence of the plaintiff.

As pointed out by the Court of Appeal in *Groves* v. *Wimborne*, (1898, 2 Q. B. 402, the Factories Act was passed in favour of workers employed in factories and workshops to compel employers to perform certain statutory duties for their protection

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and benefit, and on proof of a breach of this statutory duty imposed on the defendant and injuries resulting to the plaintiff therefrom, *primâ facie* the plaintiff has a good cause of action. *Groves* v. *Wimborne* was decided after the decision of the Supreme Court in *Montreal Rolling Mills Co.* v. *Corcoran* (1896), 26 S. C. R. 595, where the Court held that the provisions of the Quebec Factories Act were intended to operate only as police regulations, and that the statutable duties thereby imposed do not affect the civil responsibility of employers towards their employees as provided by the Civil Code. This is the law of Quebec; but the case of *Groves* v. *Wimborne* has settled the law as it applies to the Factories Act in England and Ontario. (*Wilson* v. *Lincoln Paper Mills Co.*, 9 O. L. R. 119.)

The law may be summed up thus: (1) Where there is a breach of the Factories Act the owner of the factory is liable to a penalty; (2) where the breach is the cause of an injury to an employee an action lies against the employer.

Failure to obey the direction of the Factories Act as to guarding dangerous machinery, which results in injury being caused to an employee, gives a right of action. (*Sault Ste. Marie Pulp & Paper Co.* v. *Myers* (1902), 33 S. C. R. 23; *Billing* v. *Semmens*, 7 O. L. R. 340.)

Factories Act—Knowledge—Evidence for jury.]—T. was employed as a weaver in a cotton mill, and was injured while assisting a less experienced hand by the shuttle flying out of the loom at which the latter worked, and striking her on the head. The mill contained some 400 looms, and for every forty-six there was a man called the "loom fixer," whose duty it was to keep them in proper repair. The evidence showed that the accident was caused by a bolt breaking by the shuttle coming in contact with it, and, as this bolt served as a guard to the shuttle, the latter could not remain in the loom. The jury found that the breaking of the bolt caused the accident, and that the "loom fixer" was guilty of negligence in not having examined it within a reasonable time before it broke. In an action at common law and under the Workmen's Compensation Act, 1892, T. obtained a verdict, which was affirmed by the Court of Appeal. Held, by the Supreme Court, that the "loom fixer" had not performed his duty properly; that the evidence as to negligence could not have been withdrawn from the jury: and that, as there was evidence to justify their finding, the plaintiff was entitled to recover under the Act of 1892 (the Workmen's Compensation Act, R. S. O. 1897, c. 160), but not at common law. (*Canadian Coloured Cotton Mills Co.* v. *Talbot*, 27 S. C. R. 198.)

Unfitness for purpose.]—A machine, perfect in itself, is, if applied to some purpose for which it is unfitted, defective within the meaning of sect. 3 (1) of the Workmen's Compensation for Injuries Act. (R. S. O. 1897, c. 160.) Owing to changes in legislation. *Hamilton* v. *Grossbeck* (19 O. R. 76) was declared to be no longer an authority. (*Wilson* v. *Owen Sound Portland Cement Co.*, 27 A. R. 328; and *post*, p. 89.)

Infant—Employment of—Danger—Factories Act.]—The plaintiff, a boy under twelve years of age, was hired to work a hoist for the defendants in their factory. The elevator was worked by ropes on the outside of the cab or frame, which was handled by the person standing within through a square opening cut in the framework. The plaintiff was instructed for a few hours by a bigger boy how to raise and lower the hoist, and was cautioned not to put his head out of the opening when the hoist was going. On the occasion in question the elevator stopped when going up, and the plaintiff put his head out of the opening to see what stopped it when the elevator started again, the plaintiff receiving the injuries complained of. On this evidence the plaintiff was non-suited in an action which he brought against the defendants for negligence. Held, that the non-suit should be set aside and a new trial ordered, with costs to the plaintiff in any event. The employment of a child

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under twelve to work an elevator for the uses of a manufacturing concern is made illegal by the Factories Act, and for this reason—the employer has to exercise more than ordinary precautions for the well-being and safeguarding of minors who have been put into factory work contrary to the prohibition of the legislature. (*O'Brien* v. *Sanford*, 22 O. R. 156.)

Knowledge—Appreciation of risk.]—To disentitle a workman to recover damages for a defect in a machine under the Workmen's Compensation for Injuries Act, he must not only have a knowledge of the danger he incurs, but also a thorough comprehension or appreciation of the risk he runs. The plaintiff, when formerly in the employment of the defendants, had knowledge of a defect in a machine in their factory, and after leaving had returned to such employment and had again worked at the machine, knowing that the defect, of which the defendants were aware, had not been remedied. The jury having found that he did not fully appreciate the risk he ran, the Court held that the plaintiff was entitled to damages. (*Haight* v. *Workman and Ward Manufacturing Co.*, 24 O. R. 618; and see *post*, p. 110.)

Factories Act—Defect.]—A drilling machine, manufactured by a well-known maker, and similar to those generally in use, was put up for the defendants in their factory. The plaintiff, a workman acting under the orders of the defendants' foreman, for the purpose of oiling the shafting on the arm in which the drill worked, tried to push a portion of it up and down the arm; and, in order to do so, knowing that the machine was in motion, pressed his body against the revolving drill, which was not in motion when the order was given to him, and his clothes catching on an unguarded set screw on the spindle, he was seriously injured. No other accident had occurred on the machine, which was quite new and in good order, and which, according to the evidence, was sometimes made with the set screw sunk in the spindle. In an action for damages, the jury found that the accident was caused by the defendants' negligence, and without any negligence on the part of the plaintiff. On appeal, a Divisional Court was equally divided, and, on appeal to the Court of Appeal, it was held that the absence of a guard to a projecting screw in a revolving spindle, part of a radial drill, which was used to fasten the drilling tool into the spindle, is a violation of the provisions of the Factories Act, R. S. O. 1887, c. 208, s. 15 (now R. S. O. 1897, c. 256, s. 29), the spindle being a "moving part of the machinery" within the meaning of that Act, and it is also a "defect in the condition of the machinery" within the meaning of the Workmen's Compensation for Injuries Act, R. S. O. 1887, c. 141, s. 3 (now R. S. O. 1897, c. 160, s. 4, as amended by 52 Vict. c. 23, s. 3 (O.), and in either view damages may be recovered for an accident caused by its absence. Held, by the Supreme Court of Canada, affirming the decision of the Court of Appeal, that the jury were warranted in finding that there was negligence in not having the screw guarded; that, as the foreman knew that the plaintiff had no experience as to the ordinary mode of doing what he was told, he was justified in using any reasonable mode; that he acted within his instructions in using the only efficient means that he could; and that, according to the evidence, he used ordinary care. (*O'Connor* v. *Hamilton Bridge Co.*, 25 O. R. 12; 21 A. R. 596; 24 S. C. R. 598.)

The plaintiff, a lad of seventeen, worked at a stamp machine in the defendant's factory, his duty being to keep it clean. Being refused proper material for this purpose, he used pieces of bagging. Attempting to clean it while in motion, the bagging got caught in the cog wheel, and he was injured. Held, that the defendant, knowing that the plaintiff was working with improper appliances in a dangerous place, was guilty of negligence in not making provision for his safety

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by supplying him with proper material, and in not having the machinery stopped while the cleaning was going on, and the plaintiff was entitled to retain the verdict found in his favour at the trial. As the place where the plaintiff worked was dangerous, and called for a guard under the provisions of the Factories Act, the failure to furnish one was *per se* evidence of negligence on the part of the defendant. (*Thompson* v. *Wright*, 22 O. R. 127.)

Machinery—Defect—Factories Act.]—In the case of *Hamilton* v. *Groesbeck*, 18 A. R. 1-7, it was held that the want of a guard to a saw was not a defect within the meaning of sect. 3 of the Workmen's Compensation for Injuries Act, R. S. O. 1887, c. 141, now R. S. O. 1897, c. 160, s. 3. Such a defect must be an inherent defect, a deficiency in something essential to the proper use of the machine. And when a workman in a sawmill was injured by being thrown against an unguarded saw, and it was shown that a guard would have prevented the injury, it was held that an action for negligence was not maintainable against the owners at common law nor by virtue of the above-mentioned statute, nor sect. 15 of the Ontario Factories Act, R. S. O. 1887, c. 208. An appeal by the plaintiff from this judgment, 19 O. R., was dismissed, the Court holding that on the evidence no negligence on the part of the defendants was shown. The Court also held that, as the injury in question did not occur in connection with the user of the saw, it was unnecessary to consider whether the absence of a guard was a "defect" or not within the meaning of the Workmen's Compensation for Injuries Act, and also that, as there was no evidence as to the number of persons employed on the premises in question, it was not necessary to consider the points raised as to the construction of the Factories Act. This case cannot now be considered an authority on that part of it relating to the Factories Act, as sect. 15 has been repealed. See 58 Vict. c. 50, s. 3, now R. S. O. 1897, c. 256, s. 20.

Approval by inspector—Cause of action.]—By sect. 20, sub-sect. 1 (d), of the Ontario Factories Act, R. S. O. 1897, c. 256, in every factory all elevator cabs are to be provided with some suitable mechanical device to be approved by the inspector whereby the cab will be securely held in the event of accident. Held, that the defendants' departmental store was a factory within the meaning of the Act, and the onus of proving that the brake and "dogs" in use in connection with the elevator in the store, by the fall of which the plaintiff was injured, were suitable, was upon the defendants; but it was not necessary for them to show that the device in its concrete form as part of the elevator had been approved; it was sufficient that the kind of device used had been approved. Held, also, that, in order to render the employers liable to a civil action, it was incumbent on the plaintiff to make out the causal connection between the omission to provide the statutory safeguards and the injury complained of; and that she had not done so. (*Carnahan* v. *Robert Simpson Co.*, 32 O. R. 328; and *post*, p. 110.)

Mechanical device—Approval by inspector—Onus.]—By sect. 15, sub-sect. 4, of the Factories Act, R. S. O. 1877, c. 208, now R. S. O. 1897, c. 256, s. 20 (1) (d), "All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device, to be approved by the inspector, whereby the cab or car will be securely held in the event of accident." The negligence charged was the manner in which the heads of the bolts were held and the nature of the safety catch used upon the cage of an elevator. There was no evidence to show whether this particular safety catch had been approved by the inspector. Held, that the onus was upon the plaintiff to prove that the catch had not been approved, and, if it had neither been approved nor disapproved, the question still was whether the catch used was of such a character

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and pattern as to make the use of it unreasonable. *Black* v. *Ontario Wheel Co.*, 19 O. R. 578.)

Volenti non fit injuria.]—In the defendants' dye house a number of vats were used for boiling cotton. In the course of his employment as a dyer in the defendants' factory, in which he had been employed at the same work for about three years, it was necessary for the plaintiff to stand on the top of one of these vats, the cover provided for which consisted of several boards, whose average size was 5 feet 6 inches by 10 inches, the vat being 7 feet. About 3rd December, 1886, the plaintiff complained to the defendants' foreman that these boards were insufficient in number to cover the vat adequately, but the defendants did not remedy the defect; and on the 6th of the same month, while he was at work standing on them, one of the boards slipped sideways, precipitating plaintiff into the boiling liquid. Defendants thereafter remedied the defect. A similar accident had occurred in the factory. Held, setting aside a non-suit in an action brought by plaintiff for damages, that there was sufficient evidence of negligence on defendants' part in not having had the vat "securely guarded" in compliance with the Ontario Factories Act, 1884 (47 Vict. c. 39), s. 15, sub-s. 1 (now R. S. O. 1887, c. 256, s. 20 (1) (a)), to have justified a jury in finding for plaintiff. (*Dunn* v. *Ontario Cotton Mills Co.*, 14 O. R. 119; and see *post*, pp. 94 and 110.)

Factories Act (*see R. S. O.* 1870, *c.* 256)—*Child labour—Injury to child—Cause of action.*]—The employment of a child under fourteen years of age in a factory at work other than of the kinds specified in sect. 5 of the Factories Act, R. S. O. 1897, c. 256, as proper for children, though it subjects the employer to a penalty, does not give rise to an action for damages, unless there be evidence to connect the violation of the Factories Act with the accident. (*Roberts* v. *Taylor*, 31 O. R. 10.)

Quebec Factories Act—Civil responsibility.]—The plaintiff's husband was accidentally killed whilst employed as engineer in charge of the defendants' engine and machinery. In an action by the widow for damages, the evidence was altogether circumstantial, and left the manner in which the accident occurred a matter of conjecture. Held, that in order to maintain the action, it was necessary to prove by direct evidence, or by weighty, precise, and consistent presumptions arising from the facts proved, that the accident was actually caused by the positive fault, imprudence, or neglect of the person sought to be charged with responsibility, and, such proof being entirely wanting, the action must be dismissed. The provisions of the Quebec Factories Act are intended to operate only as police regulations, and the statutable duties thereby imposed do not affect the civil responsibility of employers towards their employees as provided by the Civil Code. (*Montreal Rolling Mills Co.* v. *Corcoran*, 26 S. C. R. 595.)

The duty to warn in the case of young employees is very clearly laid down in more than one case. (See *Robinson* v. *Smith* and *Crocker* v. *Banks*; *McLatosh* v. *Firstbrook Box Co.*, 10 O. L. R. 526; and see *ante*, p. 40.)

"The purpose of sub-sect. 1) of sect. 3 and sub-sect. 1) of sect. 6 was, in my opinion, to take from the employer this immunity from liability for the neglect of the person to whom he has entrusted the duty of providing and maintaining in proper condition the appliances for the work in which his employees are engaged." (*Schwoob* v. *Michigan Central R. W. Co.*, 9 O. L. R. 91; Meredith, C.J., 13 O. L. R. 548; and see *Markle* v. *Donaldson*, 7 O. L. R. 376 and 8 O. L. R. 682; and *ante*, p. 39.)

CHAPTER III.

A BRIEF SUMMARY OF THE USUAL DEFENCES OPEN TO MASTERS.

The changes effected by the Act and the defences open to an employer are thus summarized by Mr. Justice Smith in his judgment in the case of *Weblin* v. *Ballard*, 17 Q. B. D. 124:—

"A point of very general application is raised in this case, viz., what defences are now open to a master when sued by a workman under the Employers' Liability Act, 1880? To determine this it is necessary to bear in mind how the law stood prior to the passing of this Act.

"A servant might have sought redress from his master for personal injuries subject to any defence the master might set up in the following cases:—(a) for injuries sustained by the servant by reason of the negligence of the master himself; (b) for injuries sustained by reason of the negligence of a servant acting within the scope of the master's employment; (c) for injuries sustained by reason of the master having negligently provided defective or dangerous implements or materials.

"To these causes of action the master might have set up, amongst others, the following defences:—Traverse of the negligence and contributory negligence on the part of the plaintiff. These defences the master had irrespective of the fact of his being the master and the plaintiff being his servant. The master, however, had also, in addition to the above-mentioned defences, two other defences arising from the relative position of servant to master and peculiar thereto. He had the defence of what we may term, for brevity, the defence of common employment. He had

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The negligence of the defendants must be the sole cause of the accident (*Fawcett* v. *C. P. Rail. Co.*, 8 B. C. R. 393), and it is the plaintiff's duty to show that the accident was caused by the defendants' negligence; mere conjecture will not suffice. *Farmer* v. *G. T. Rail. Co.*, 21 O. R. 299. And see *post*, p. 110.)

also the defence the servant had contracted to take upon himself the known risks of the employment. In what way then has the Act affected the position of the master when sued by a workman under the provisions of that Act? By sect. 1 it is enacted that where personal injury is caused to a workman, the workman shall be at liberty to sue his employer for any five matters designated in that section as qualified by the 2nd section, and that in such actions the workman shall have the same rights of compensation and remedies against the employer as if the workman had not been a workman, nor in the service of the employer, nor engaged in his work. What is the meaning of this? In our judgment it means that the workman, when he sues his master under the provisions of the Act for any of the five matters designated in it, shall be in the position of one of the public suing, and shall not be in the position a servant theretofore was when he sued his master; in other words, that the master shall have all the defences he theretofore had against any one of the public suing him, but shall not have the special defences he theretofore had when sued by his servant. What then is the result? It is this: that the defence of contributory negligence is still left to the employer, but the defence of common employment and also the defence that the servant had contracted to take upon himself the known risks attendant upon the engagement are taken away from him when sued by him under the Act. . . . In our own judgment, however, the Legislature, whilst taking from the employer the two defences above mentioned, has given him a statutory defence under sect. 2, sub-sect. 3, which theretofore did not exist (*a*). It is this: the employer, when sued for a defect in the ways, plant, or machinery, may set up that the servant knew of the defect and did not communicate it to him, the employer, or to some other person superior to himself in the service of the employer. This, if proved, would avail the employer as a defence; and the only excuse which the workman would have for not communicating the known defect would be to establish that he was aware that the employer knew of it. The Legislature has thus taken from the employer two defences and given him another. This, in our judgment, is the true effect of the Employers' Liability Act, 1880."

(*a*) Canadian cases, W. C. I. Act, R. S. O. 1897, c. 160, s. 6, sub-s. 3, *ante*; and *post*, p. 110 *et seq.*

And first, a master may traverse the negligence, that is, deny the fact of having been negligent, or, at least, of having been guilty of such negligence as would give the plaintiff a right of action against him. It is not all negligence that is actionable. Many definitions of what is actionable negligence have been attempted by our lawyers, but none with complete success, *i.e.*, according to the opinion of their brother judges. The best seems to be that of Brett, M. R., in *Heaven* v. *Pender*, 11 Q. B. D. 507. There he says, "Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill, by which neglect the plaintiff, without contributory negligence on his part, has suffered injury to his person or property."

Hence a master successfully traverses his negligence. First, if he proves that, in fact, he did exercise ordinary care, or, secondly, if he prove that he did not owe any duty to the plaintiff to exercise ordinary care to him in the particular circumstances of the case. The duty an employer owes to his servant has been dealt with in the preceding chapters, as well as what has been held negligence; but under the traverse of negligence is included what was the most important defence under the Act, namely, *injuria non fit volenti*, and which will require further discussion.

This defence does not say there has been no want of care on the part of the master, but says that the plaintiff by his acquiescence has waived such care being exercised to himself; it does not say the plaintiff has been guilty of contributory negligence, but that he has been injured by a danger he knowingly faced and willingly took. The result of the cases now is that the defence is not sound as regards the first proposition, and that a plaintiff, by mere knowledge, never waives a master's neglect of care, but is sound as regards the latter one. The celebrated case of *Yarmouth* v. *France*, 19 Q. B. D. 647 (*a*), illustrates the first. A carter was told to drive a vicious horse. He objected; but doing so he was kicked, and his leg was broken. Held he was entitled. He had not waived his right to his master providing a proper horse by merely knowing it was vicious and continuing to drive it. *Fraser* v. *Hood*, 1887, 15 R. 178, a Scotch case, a vicious stallion that

(*a*) Also referred to page 44.

was dangerous, and a biter, as was well known, broke loose. The master told his stableman to fasten him up. In trying to do so the horse got hold of his arm and broke it. Held he could not recover.

The first time this defence of *volentia* was successful was in the great case of *Thomas* v. *Quartermaine*, 18 Q. B. D. 685 (*a*). In this case, between a boiling vat and a cooling vat in a brewery there was a gangway about three feet wide. The plaintiff was trying to pull a board from under the boiling vat, when it stuck; then it came away with a jerk, and he fell over into the cooling vat, and was scalded. The Court, Lord Justice Bowen and Lord Justice Fry, Lord Esher dissenting, held he could not recover. The danger, such as it was, he had taken willingly. This case caused a great deal of comment at the time, being favourably or unfavourably received, according to the personal bias of the individual; for, as said by Lord Esher in *Walsh* v. *Whiteley*, 21 Q. B. D. 371, "There have always been two schools of thought. Some judges, much impressed by the danger of injustice being done to the employer in this matter, have looked narrowly and strictly at the statutory provisions relating to the liability of employers, and at the application of their principles, and naturally, have also looked strictly on the evidence in each particular case; on the other hand, other judges have been impressed by the feeling that masters and workmen are not on equal footing, inasmuch as danger, when it exists in any employment, exists not for the employer but the workman, and this danger the workman must either incur or give up his means of subsistence."

The judgment in which Bowen, L. J., supported his views, is considered one of the most masterly ever delivered, and in the subsequent history of the case, though it has been distinguished in every way possible, it has never been overruled. On the other hand, pressed a little further, and his arguments would have revoked the Act. In the first place there had to be settled what rights a servant who has been injured, has under the Act.

Lord Esher had rather suggested that the doctrine of *injuria non fit volenti* could not apply, as in sect. 2, sub-sect. 3, the Act evidently contemplated a servant knowing of a risk and yet

(*a*) Canadian case.—See *Dean* v. *Ont. Cotton Mills*, *ante*, p. [illegible]

recovering, as it said he was not to recover when he did know of a defect unless he told his master or knew his master already was aware of it. Lords Justices Bowen and Fry both held the maxim did apply, for by sect. 1 the rights a servant was to have were precisely stated by sect. 1, viz.: to be those he would have if not a servant, that is if a stranger; that the second clause was to limit a master's liability and could not logically be read to extend it, and hence if the doctrine of *scienter* applied in the case of a stranger, it did, if applicable equally, apply to a servant suing under the Act. This exposition of the law has now been generally accepted. In the case when first tried, the County Court judge had found that the plaintiff was as fully aware of the danger he ran as his master, but had not been guilty of contributory negligence. After a brief *résumé* of the facts and a short reference to the nature of contributory negligence, his Lordship, Lord Justice Bowen, said:—"In order to answer our first inquiry whether the defendant had been guilty of negligence, our first step must be to consider what is the duty towards the plaintiff that it is alleged the defendant has broken—for the ideas of negligence and duty are strictly correlative, and there is no such thing as negligence in the abstract. Negligence is simply neglect of some care which we are bound by law to exercise towards somebody. The Common Law imposes on the occupier of premises no abstract obligation at all as to the state in which he is to keep them—provided he carries on no unlawful business and is guilty of no nuisance. In the case of premises that contain an element of danger a duty arises as soon as there is a probability that people will go upon them, but it is a duty only to such people as actually do go. It is not a duty in the air, but a duty to particular people. The occupier is bound to use all reasonable care to prevent such persons being hurt. It is obvious that this duty must vary, according to the character of the danger and the circumstances under which the premises are to be visited. It differs in the case of hidden dangers and the case of dangers that are palpable and visible; it may vary according to the age and comprehension of the visitor: in the case of bare licensees and those who come on the premises on the occupier's business and at his invitation. The only obligation on the occupier is to take such precautions as are reasonable in each instance to prevent

mischief, and this is but the adaptation to a special case of the general doctrine, *sic utere tuo ut alienum non laedas.*

"In the absence of any further act of omission or commission by the occupier of premises, or his servants, or of any disregard of statutory provisions, or of individual rights, can it properly be said that there has been upon his part any breach of duty towards a person who, knowing and appreciating the danger and risk, elects voluntarily to encounter them? I employ a builder to mend the broken slates upon my roof, and he tumbles off. Have I been guilty of any negligence or breach of duty towards him? Was I bound to erect a parapet round my roof before I had its slates mended? In the case now before us the negligence relied on by plaintiff is that a vat in the room in which he worked was left without a railing. Let us suppose that the defendant, impressed with the danger, had actually sent for a builder to put one up, and the builder had fallen in while executing the work. Would the defendant be guilty of a breach of duty to the builder? The duty of an occupier of premises which have an element of danger upon them reaches its vanishing point in the case of those who are cognisant of the full extent of the danger, and voluntarily run the risk. *Volenti non fit injuria.*"

This is not new law. It is old as the Roman digest, and has been accepted by the Courts of this country. "That," says Cockburn, C. J., in the Court of Appeal, in *Woodley* v. *Metropolitan District Railway Co.*, 2 Ex. D. 384 (*a*), "which would be negligence in a company, in reference to the state of their premises or the manner of conducting their business so as to give a right to compensation for an injury resulting therefrom to a stranger lawfully resorting to their premises in ignorance of the existence of the danger, will give no such right to one who, being aware of the danger, voluntarily encounters it, and fails to take the extra care necessary for avoiding it." "If a person," says the Court of Exchequer Chamber, in the leading case of *Indermaur* v. *Dames*, L. R. 2 C. P. 311, "enters into a contract in the fulfilment of

(*a*) In this case the plaintiff was working in a railway tunnel. Through there not being a man to warn him when trains were coming he was injured. Not having such a man was held to be negligence, but the plaintiff having voluntarily continued working without him could not recover.

which workmen must come on the premises who are probably unacquainted with the danger they are likely to incur, is he not bound either to put up some fence or safeguard about the hole, or if he does not, to give such workmen a reasonable notice that they must take care and avoid the danger?" It is no doubt true that the knowledge on the part of the injured person, which will prevent him from alleging negligence against the occupier, must be a knowledge under such circumstances as leads necessarily to the conclusion that the whole risk was voluntarily incurred. The maxim, be it observed, is not *scienti non fit injuria*, but *volenti*. It is plain that a mere knowledge may not be a conclusive defence. There may be a perception of the existence of the danger without a comprehension of the risk, as where the workman is of imperfect intelligence, or though he knows the danger, remains imperfectly informed as to its nature and extent. There may, again, be concurrent facts which justify the inquiry whether the risk, though known, was really encountered voluntarily. The injured person may have a statutory right to protection. The case of *Holmes* v. *Clarke*, 7 H. & N. 937 (*a*), is a case of that sort, and has been so explained subsequently by judges of authority; or, again, the plaintiff may have a common right, or individual right at law, to find these particular premises free from danger, as in the case of lands on which a market or fair has been held, *Winch* v. *Conservators of the Thames*, L. R. 9 C. P. 378; *Lax* v. *Corporation of Darlington*, 5 Ex. D. 28.

The defendant in such circumstances does not discharge his legal obligation by merely affecting the plaintiff with knowledge of a danger which, but for a breach of duty on his part, would not exist at all. But where the danger is one incident to a perfectly lawful use of his own premises, neither contrary to statute nor

(*a*) Here the fence put round certain mill machinery, required by statute to be fenced, was broken. The master, negligently, did not repair it, but promised to do so. Relying on this promise, the plaintiff, who had been in the employ when the fence was in good order, continued working. Through want of the fence he was injured, and was held entitled to recover. In this case, in their judgment the Court made a distinction between dangers existent at the time the contract of service was entered into and those arising afterwards, and in subsequent cases the fact of complaining is held to go a long way to negative the voluntary acceptance of the danger.

Common Law, where the danger is visible and the risk appreciated, and when the injured person, knowing and appreciating the risk and danger, voluntarily encounters them, there is, in the absence of further acts of omission or commission, no evidence of negligence on the part of the occupier at all. Knowledge is not a conclusive defence in itself. But when it is a knowledge under circumstances that leave no inference but one, viz., that the risk has been voluntarily encountered, the defence seems to me complete (*a*).

Yarmouth v. *France*, 19 Q. B. D. 647, the case of the vicious horse just referred to, followed in the next year, and is the authority on the exceptions to the ruling thus laid down by Bowen, L. J. It distinguished between *sciens* and *volens*, and held that mere knowledge of the workman is not enough, unless it is such knowledge as shows he took the risk voluntarily with a full appreciation of its extent (*b*).

On this principle *Brooke* v. *Ramsden*, 63 L. T. 287, was decided. In this case the plaintiff had worked at a planing machine some six or seven weeks. A pinion wheel was defective, and he had spoken to one of the defendants about it, and he said, "They would not spend anything more upon the old thing." After that, when regulating a cup which would not have been necessary if the

(*a*) See also *Bruce* v. *Barclay*, 1890, 17 R. 811, p. 13, when it was held that, assuming there was danger, the deceased knew it as well as the defenders; and *Wilson* v. *Boyle*, 1889. 7 R. 62, p. 37.

In *M'Ternan* v. *White*, 1890, 17 R. 368, the pursuer was injured by a fellow-workman being drunk, as the defendant knew. But he also knew, and so could not recover.

So in *Church* v. *Appleby*, 58 L. J. Q. B. 144. Here the husband of the plaintiff worked on a staging on the river Thames. It was protected on one side only, and one night he fell over the unprotected side and was drowned. Held, by the County Court jury, he had voluntarily undertaken the risk with a full knowledge of its extent; and, on appeal, the Court refused to set aside their finding.

(*b*) In *M'Coll* v. *Black*, 1891, 18 R. 507, the husband of the pursuer was killed when working in a drain, through the sides not being sufficiently propped and giving way. The defence—he knew the risk as well as the foreman—failed.

In *M'Monagle* v. *Baird*, 1881, 9 R. 364, a miner complained that part of the roof of the main roadway was unsafe. The oversman caused it to be partially secured, and told the man to go. He did so, though he still thought it was not sufficiently propped. In the event it proved not to be so, and it came down and he was injured. Held he was entitled.

pinion had been in order, he was injured. On the facts the County Court judge non-suited him. In the Divisional Court, Mr. Justice Cave expressed his regret that there should be non-suits in such cases, and said if everyone who complained or knew of a defect was to be disentitled to recover, bad masters would only have to point out defects to put themselves in a better position than masters who took all possible pains to ensure the safety of their workmen. Justice A. L. Smith concurred, and said, "It has been at last held that mere knowledge is not enough to disentitle a plaintiff to recover. There must be a thorough comprehension on his part of the danger and the risk, and a voluntary undertaking by him of that risk and danger. The case must go for a new trial."

We note in this case the plaintiff had complained. It does not appear that the plaintiff complained on the ground that the defect made the machine dangerous to himself, but because it worked badly. When a man does complain about a defect because of its being dangerous to himself, it is almost conclusive evidence he is not *volens* in taking the risk of it.

In *Sanders* v. *Barker*, 6 T. L. R. 324, the wheel of a pump in a brewery, which ought to have started when steam was turned on, needed a slight touch to set it going. In giving this touch the plaintiff lost his finger. He knew of the defect, he had complained to the defendants, but he said he had not full knowledge of the risk he was running but only that an accident might happen. The Court of Appeal gave judgment for him. In this case Lord Coleridge made the greatest point of the fact, and repeated the question:—"Is there any case in which the workman having pointed out the danger and asked that it should be remedied the employer has been held not liable?" In this case a man could not be said to have been *volens*, for he had remonstrated with his master about the danger (*a*).

This case was almost immediately followed by *Amos* v. *Duffy*, 6 T. L. R. 339, where the plaintiff had to use a circular saw which ordinarily was protected by a guard. Owing to the screw being loose the guard slipped, and he lost three fingers. The defence that he knew the risk and accepted it was held bad, as he had not

(*a*) See also *Holmes* v. *Clarke* and cases in note, page 102.

fully appreciated the risk he ran, as he also had complained previously about the screw being out of order to the foreman (*a*).

Next we find the defence of *volentiâ* is not available where there has been a breach of statutory requirements.

In *Baddeley* v. *Earl of Granville*, 19 Q. B. D. 423, the husband of the plaintiff was a miner, and was killed by an accident when coming out of the mine at night, caused through there being no banksman, the absence of such banksman being a breach of a statutory rule. The plaintiff's husband knew that this rule was habitually neglected. Here the Court held the defendants liable, and that the maxim did not apply in the case of breach of a statutory duty, and further, Mr. Justice Wills expressed his opinion that any contract between master and man that such rules should be disregarded would probably be void as against public policy.

We now come to the most important case of all, that of *Smith* v. *Baker*, 1891, A. C. 325, in the House of Lords, where the principles laid down in *Yarmouth* v. *France* were finally approved of. In this case the plaintiff was employed by railway contractors to drill holes in a rock cutting. Near him was a steam crane for lifting stones. These sometimes were swung over his head, and no warning was given. The plaintiff knew of the danger, complaints had been made to the ganger in his hearing, and he had been thus employed for months. A stone having slipped and injured him, he sued his employers under the Act. The jury found:—(1) The machinery for lifting the stone, taken as a whole, was not reasonably fit for the purpose to which it was applied. (2) That the omission to supply special means of warning was a defect in the ways, works, machinery, or plant. (3) That the employers, or some person engaged by them to look after the condition of the works, &c., were guilty of negligence in not remedying the defect. (4) That the plaintiff was not guilty of

(*a*) See also *Wallace* v. *Cutter Paper Mills*, 1892, 19 R. 915. Here the husband of the pursuer was killed while pointing out a defect in a calender machine. It was dangerous, and should have been fenced. The deceased had complained before of the want of a fence, and if it had been fenced he would not have been killed. Held the defenders liable, and that the deceased continuing to work did not imply he relieved his employers from their responsibility. *Smith* v. *Baker* (*infra*) followed.

contributory negligence. (5) That he did not voluntarily undertake a risky employment with a knowledge of its risk. The Court, Lord Brannwell dissenting, held—reversing the Court of Appeal—that the mere fact the plaintiff undertook and continued in the employment with full knowledge and understanding of the danger arising from the systematic neglect to give warning did not preclude him from recovering, and that there was evidence to justify the jury in finding that the plaintiff did not voluntarily undertake the risk, and that the action was maintainable. *Sword* v. *Cameron*, 1839, 1 D. 493, approved; and *Thomas* v. *Quartermaine*, commented on; and the law as stated by Lord Bowen, also approved of, but distinguished. The above findings of the jury, individually, are rather startling, especially the second; but as Lord Watson puts it, "as a whole the findings affirm three different propositions, constituting one form of negligence, namely, the neglect of the defendants to take proper precautions for protecting their employees from the possible consequences of a faulty system of working a crane." The great distinction between a man being *volens* and merely *sciens*, to be gathered from this case, seems to be this:—A man undertaking a risky or dangerous occupation voluntarily undertakes all the risks and dangers properly incident to it, *e.g.*, a sailor, or a man working amongst the deadly fumes of some chemical works; but as regards perils not inherent to the work, and not necessary to be run if proper tackle, machinery, &c. be used, and a proper system adopted, he is not to be considered *volens* so as to relieve the master from his responsibility to take proper care because he does not at once quit his employment. The law just stated had been rather anticipated in Scotland, and is thus shortly and admirably summed up by Lord Watson in *Bowie* v. *Rankine* (*a*), 1886, 13 R. 981:—"I forbear to go into the general question of how far a workman does or does not undertake the risks which are incident to his employment. He never undertakes risks which are due to the fault of his employers or of their

(*a*) Here the facts were:—In a machine shop, a ship propeller two tons in weight had to be moved on a bogie. Owing to a bad place in the floor, which had only been filled up with shavings and covered with a thin iron plate, the bogie sank into it, and the propeller, which had been partly supported by tackle, swung off it, and struck the pursuer, and injured him. Held he was entitled to recover.

superintendents. This is the law as it stands, favourable to the workman, just to the master; is any statutory alteration likely to be an improvement?" (*a*).

(*a*) A later case is *Greenhalgh* v. *Cwmaman Coal Co.*, 8 T. L. R. 31. The plaintiff worked in a coal hulk not properly lighted, and was injured. On appeal it was held *volentia* for the jury, and non-suit was set aside. The Court also expressed their opinion non-suiting was undesirable in these cases.

The following are some of the principal cases in which a similar defence has been raised in actions brought at Common Law.

In *Senior* v. *Ward*, 28 L. J. Q. B. 139, it was the rule in a colliery to test the rope every day that was used for pulling the men up and down in the ordinary cage, but it was a rule that was habitually disregarded. One night the rope was injured by an accidental fire. Next morning the banksman told the men they had better test it before using it. They, however, refused, got into the cage as usual, and the rope breaking, were all killed. Held their representatives could not recover.

In *Skipp* v. *E. C. R.*, 23 L. J. Ex. 23, a guard of a train had to make up a train, but in consequence of not having another person to assist him, and the engine suddenly starting, he was thrown down and injured. He had been working without extra help three months. Held he could not recover, and that it was not a question for the jury whether there was an insufficient staff, per Parke, B. He goes into the service and willingly incurs the danger.

In *Dynen* v. *Leach*, 26 L. J. Ex. 221, the servant of a sugar refiner was killed by a sugar mould falling on him. This mould was raised by a clip, which slipped; had it been fastened by a net bag, as was done with other moulds, no accident could have happened. Held he had continued using the clip with full knowledge of the circumstances. It was also surmised, and probably with reason, that the cause of the accident was his own negligent way of fixing the clip.

In *Assop* v. *Yeates*, 27 L. J. Ex. 156, a hoarding of a building that was being built projected rather far into the street. A cart struck it, and it knocked down a machine close to it, which in its turn knocked down a ladder on which the plaintiff was, and he was injured. The plaintiff had before made some complaint of the machine being where it was, but continued voluntarily to work as before. Held there was no evidence of the master's liability.

In *Griffiths* v. *Gidlow*, 27 L. J. Ex. 404, the plaintiff assisted in filling a tub with water at the bottom of a shaft that was being sunk, and on its being drawn up it slipped off the hook it was fastened to, and fell on him, and injured him. He alleged the hook was improper, and that it should have been a spring hook, but the Court held he had used the hook as it was and never complained, and decided against him.

Holmes v. *Worthington*, 2 F. & F. 533, was the case where a brewer's man was injured by a rope breaking that he had to use for drawing up casks. He had complained to his master about it being out of repair, and the master had promised to see to it. Held he was entitled to recover.

If the defence of *volenti* is now practically of little value to masters in the cases where there has been want of care on their part, yet they have still open to them the special defence given them by the Act. By sect. 2, sub-sect. 3, it is provided that a workman shall not be entitled under the Act to any right against his employer *in any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.*

We have seen Justice A. L. Smith treat this section as furnishing a defence to the master, page 91; and so, apparently, if no evidence on the matter be given at all by either party, it will be assumed the case is not within its provisions.

We have also seen that where a servant has complained of a defect and his master has promised to remedy it, he has a right to continue working on the faith of such promise without being held to have waived his right to have it remedied. What would be his position if the master in distinct terms told him he would not remedy it? Judging from the decision in *Brooke* v. *Ramsden* (*supra*), page 98, it would make no difference, and a master can only permit machinery unnecessarily dangerous or defective to be used at his peril. So careful are the Courts of the safety of the

In *Williams* v. *Clough*, 27 L. J. Ex. 325, the plaintiff was injured by a ladder breaking through being defective, to the defendant's knowledge; judgment was given for the plaintiff.

In *Ogden* v. *Rummens*, 3 F. & F. 751, a labourer had been employed with others to shore up a defective arch, and was killed by its falling on him. Held the question was not as to the original construction of the arch, but whether the defendant had better knowledge of the danger than the deceased, and on this the jury returned a verdict for the defendant.

See also *Woodley* v. *Metropolitan R. C.*, 2 Ex. D. 384, p. 74; *Holmes* v. *Clark*, 31 L. J. Ex. 356, p. 75; *Mellors* v. *Shaw*, 30 L. J. Q. B. 333, p. 12; and *Thrussell* v. *Handyside*, 20 Q. B. D. 359.

Complaints to a foreman are not enough to saddle a master with responsibility at Common Law. Thus in *Hall* v. *Johnson*, 34 L. J. Ex. 222, the plaintiff failed who had only complained to an underlooker of a mine; and so in *Wigmore* v. *Jay*, 19 L. J. Ex. 300, where a defect in a bad scaffold pole had been pointed out to a foreman only, the plaintiff could not recover. *Williams* v. *Birmingham Battery Co.*, *ante*, page 18, is an important case.

workman, they will not allow him the alternative of putting himself in needless danger or forfeiting his livelihood. On the other hand this clause protects masters from having actions sprung on them for defects of which they knew nothing, and had never had the opportunity of remedying.

Having thus dealt with *volentia*, we now come to the important subject of contributory negligence.

The defence of contributory negligence may be relied upon by masters sued under the Act. *McEvoy* v. *Waterford S. S. Co.*, 18 L. R. Ir. 159, Ex.

The defence of contributory negligence denies that the negligence of the defendant was the proximate cause, the *causa causans* of the injury suffered by the plaintiff. It arises where there has been a breach of duty on the defendant's part, not where *ex hypothesi* there has been none. It rests upon the view that though the defendant has been negligent, yet the plaintiff has by his own carelessness severed the causal connection between the defendant's negligence and the accident which has occurred so that such negligence is no longer the true proximate cause of the injury. It is for this reason that under the old form of pleading the issue of contributory negligence could be raised under the plea of not guilty, see judgment Lord Justice Bowen in *Thomas* v. *Quartermaine*, 18 Q. B. D. 697. The case of *Davies* v. *Mann*, 10 M. & W. 546, 1842, the celebrated donkey case, decided this further point, that if the defendant, with care, could still have avoided the consequences of the plaintiff's contributory negligence he will be liable if he has not done so.

In the same way as many definitions have been attempted of actionable negligence, so also have many been attempted of contributory negligence. None are wholly satisfactory, not even that in *Radley* v. *L. & N. W. R.*, 1 Ap. Cas. 754, in the House of Lords, where the whole question was much discussed, and in the *Vera Cruz*, 9 P. D., p. 94, Mr. Justice Butt expresses his strong dissent not to the decision of the case, but to the inferences drawn from remarks in support of it. The result of his criticism, which has been subsequently approved by other judges, and of the cases, seems to be this: assuming the negligence of the defendant, then if the defendant after being negligent could by the exercise of

ordinary care have still avoided the consequences of the plaintiff's contributory negligence and has not done so he will be liable for his original negligence. In *Davies* v. *Mann*, just referred to, the driver of a coach negligently ran down a donkey hobbled in the road. The donkey being so in the road was contributory negligence of the plaintiff, but it was shown the driver, with care, could still have avoided injuring the donkey, *i.e.*, could have avoided the consequences of the plaintiff's negligence and did not do so, and therefore the plaintiff recovered (*a*). In *Radley* v. *L. & N. W. R.*, also just referred to, the plaintiffs had a siding to a colliery, over which was a bridge. They had negligently, as the jury found, left their trucks on the company's line. Among them was one with another truck upon it. The defendants ran the trucks back on to the siding. Owing to the truck with the other on it being too high to go under the bridge they all stuck. The defendants, however, still continued pushing, with the result the bridge was broken down. The House of Lords decided that as the defendants, with ordinary care, could have avoided the consequences of the plaintiff's negligence in leaving their trucks on the defendants' line the defendants were liable.

A case before Mr. Justice Wright at the Liverpool Assizes some few years ago affords one of the best illustrations of a plea of contributory negligence being a complete defence. I am now writing from memory, and cannot be positive whether the case was one actually in course of trial before Mr. Justice Wright or a hypothetical case stated by him by way of example, but either is equally valuable.

A man was on a railway branch line. He had no business there, and was run down. The driver was shunting, and was in such a position he could not see before him. He had no business to be in such position and was therefore also negligent. But the plaintiff could not recover, for the driver, after being negligent, was never able to avoid the consequences of the plaintiff's contributory

(*a*) See also *Tuff* v. *Warman*, 5 C. B. N. S. 573. Here a steamer of the Thames negligently ran down a barge. The owners of the barge were guilty of contributory negligence, as they neither ported nor kept a look-out, but as the steamer could still have avoided the consequences of such contributory negligence the plaintiff recovered.

negligence, for he never saw him or knew of his existence at all till the accident had taken place. Supposing, however, the driver's negligence had been running against a danger signal and he had seen the man, but thought he would get out of the way, and had done nothing to warn him or avoid him, then the contributory negligence of the plaintiff would have been no defence, as the defendant might have avoided the consequences of it.

It does not follow that every plaintiff who does not do the wisest thing when suddenly put in danger by the defendant's negligence is therefore guilty of contributory negligence. The case of the *Bywell Castle*, 4 P. D. 219, is an illustration of this. This was the terrible catastrophe of the *Princess Alice*, when she and the *Bywell Castle* came into collision. There was no doubt about the negligence of the *Princess Alice*, but her owners sought to make the *Bywell Castle* also responsible, by showing that if she had been better navigated the effect of the collision might have been lessened. The Court held that the *Princess Alice* being clearly to blame, the *Bywell Castle* was not to be held guilty of contributory negligence because in the agony of a collision she did not adopt the very best course possible, and which in a less exciting moment might possibly have been adopted. So also if a plaintiff is put into danger by the negligence of the defendant, and to escape it falls into another, that will not relieve the defendant, not even if he voluntarily incur the latter danger (*a*), but not if he incurs it merely to escape inconvenience (*b*).

Nor can a defendant who puts another into danger expect that other to use more than ordinary intelligence in taking care of himself, and what might constitute contributory negligence in a qualified engineer would be no defence in the case of a labourer. Thus where a charge of gunpowder in a boring had failed to go off, and a workman and a skilled quarryman were trying to get it out, and they used a steel jumper instead of a copper needle, with the result there was a spark and an explosion, it was held there

(*a*) As where a passenger on a coach that is in imminent risk of being overturned jumps off and breaks his leg, as in *Jones* v. *Boyce*, 1 Starkie, 493.

(*b*) *Adams* v. *L. & Y. Railway Co.*, L. R. 4 C. P. 739, as where the door of a railway carriage repeatedly flew open, and on the plaintiff shutting it for a fourth time fell out and was injured.

was no contributory negligence on the part of the workman, as to a man of inexperience the work was not so obviously dangerous as to disentitle him to recover (*a*). It is on this principle that a person must use such intelligence as would ordinarily be expected from one in his position, that what would be contributory negligence in a grown-up man would not be so in a child or young person. In *Sharp* v. *Pathead Spinning Co.*, 1885, 12 R. 574, a girl under fourteen was cleaning a carding machine when in motion, and was injured. She had been ordered not to touch it when in motion. Setting a girl under fourteen to work at a carding machine was contrary to statutory regulation. On this ground a verdict was given for her, and the Court refused to find she had been guilty of contributory negligence, as although she would have been safe if she had attended to what was told her, yet on account of her tender age that was just what should not have been expected or relied on. The defenders had no right to put her at the machine at all, at any rate, without special precautions (*b*).

We have seen it is a master's duty to provide his servant with proper tackle, &c., and a servant has a right to assume such tackle has been provided, and he is not to be held guilty of contributory negligence because he does not take precautions against possible defects (*c*). Also a workman has a right to assume a master has

(*a*) *Cook* v. *Stark*, 1886, 14 R. 1. See also *Smyly* v. *Glasgow S. P. Co.*, 16 W. R. 483, as to the duty owed to an ignorant man when putting him to dangerous work.

(*b*) Where a boy told a lie and said he was over fourteen when he was not, and looked over fourteen, and was injured under similar circumstances, he failed to recover, *Carty* v. *Nicholl*, 1878, 6 R. 194.

As to contributory negligence in children see *Lynch* v. *Nurdin*, 1 Q. B. 29; *Lygo* v. *Newbold*, 23 L. J. Ex. 108; *Abbot* v. *Macfie*, 33 L. T. Ex. 177; *Mangan* v. *Atherton*, L. R. 1 Ex. 232.

Of course similarly what would not be negligence to one grown up might be to a child, *e.g.*, as in *Clarkson* v. *Musgrave*, 9 Q. B. D. 386, where it was held negligence to allow a young girl to go in a hoist alone; but see *Murphy* v. *Smith*, 19 C. B. N. S. 361, where a boy in a match factory was injured by an explosion of phosphorus, but failed to recover.

See also *Grizzle* v. *Frost*, 3 F. & F. 622, where a girl under sixteen was put to work at a carding machine and got her arm dragged in, and it was held negligence allowing a young girl to work at it without taking special precautions; and see *Crocker* v. *Banks*, 4 T. L. R. 324.

(*c*) *Rooney* v. *Allen*, 1883, 10 R. 1224, where the pursuer was injured through the breaking of a defective chain, and was not held disentitled because he had not taken shelter.

done his duty and to act on that assumption, as in *M'Inally* v. *King's Trustees*, 1886, 14 R. 8, where in opening up a freestone quarry it was the practice to dig two chambers in the face of the bank and then tunnel between them, leaving in supports until the tunnel was finished. These were then removed, the tunnel fell in, and the loose earth was carted away. Removing the last supports was dangerous, and the man ing so was usually warned when any cracks or other signs of falling began to appear outside, and it was the duty of the defenders to have some one to give such warning. Owing to none being given on this occasion the son of the pursuer stayed in too long, the tunnel fell in on him and he was killed. Held the defenders were guilty of negligence, and that the deceased had not been guilty of contributory negligence, as he had a right to assume the foreman had done his duty in setting a watchman.

Similarly as a man may be responsible for another who acts for him and by his authority, so also a man may be so completely identified with another that the contributory negligence of that other must be regarded as his contributory negligence. What would constitute such identification is now a matter of much difficulty. The authority on the subject was *Thoroughgood* v. *Bryan*, 8 C. B. 115, decided in 1848. The facts there were, a passenger was getting out of one omnibus which the driver negligently did not draw up to the kerb, and without any negligence on his own part was run down and killed by another omnibus which was negligently driven. His representatives sued the owners of this last omnibus but failed, as it was held the negligence of the driver of the omnibus on which the deceased was, was his negligence, and he was so identified with him he could not recover. Until 1887 this decision, though generally doubted, remained unreversed. Then in "The Bernina," 12 P. D. 58, the Court of Appeal finally overruled it (*a*). Thus for a period of nearly forty years we have a number of cases decided which may have followed this decision or not, but must have been influenced by it. These, of course, are all affected by "The Bernina," and cannot be referred to with any confidence. As all the authorities are collected and reviewed in this case, and as the subject is one not likely to have any great be ing on

(*a*) Canadian case—*Sault Ste. Marie Pulp Co.* v. *Myers*, 33 S. C. R. 23.

actions under the Act, I must refer my readers to it, and if they have to solve any question turning on identification they will find the law there most completely dealt with. Again, it is no defence for a defendant to prove that though he was negligent yet his negligence was not the proximate cause of the accident, but the negligence of some third party. In *Clark* v. *Chambers*, 3 Q. B. D. 327, the defendant wrongfully put a *chevaux de frise* armed with spikes across the road as a barrier. Another person removed it and put it in an upright position across the footpath. The plaintiff coming along the footpath at night ran against it, and one of the spikes injured his eye. There was no negligence found on his part, and the defendants were held liable, though the proximate cause of the injury was the act of a third party.

Again, what is the proximate cause of an injury, whether the negligent act of the defendant or some other matter, is often a question of the greatest nicety.

In *Hill* v. *New River Co.*, 9 B. & S. 303, the defendants, a water company, caused a spout of water to shoot up on a public highway. This frightened the plaintiff's horses so that they swerved and fell into an insufficiently fenced ditch, made in the middle of the road by the Commissioners of Streets, and were injured. The defendants were held liable. They had been the original cause of the accident, and whatever rights the plaintiff might have had against the Commissioners for negligently fencing ditches they made, did not relieve them of *their* responsibility.

On the other side, the case of *Sharp* v. *Powell*, L. R. 7 C. P. 253, is interesting, and the leading authority. Here the defendant's servant washed his van in a public street, and allowed the waste water to run along the gutter to a grid some twenty-five yards off. This grid was blocked by ice; the water accumulated on the roadway and froze, and the plaintiff's horse, while being led past the spot, slipped and broke its leg. There was no evidence the defendant knew the grid was blocked, and as his washing his van was no breach of duty to the plaintiff in its inception it was held the cause of damage was too remote, and that the defendant was not liable.

However, the subject is too large to be more than here indicated, and if the reader will turn up either of these cases in "Roscoe's

Nisi Prius Evidence," he will at once find all the authorities fully cited or discussed.

Thus far I have tried to deal with the broader principles of contributory negligence and the other defences open to masters, but to obtain a thorough understanding and appreciation of them there is only one way possible, and that is by a close investigation and study of the cases themselves. If I have succeeded in putting practitioners on the easiest track for finding such cases most readily I have accomplished the purpose of this work (*a*).

(*a*) I have not dealt with such special defences as infancy, coverture, bankruptcy, and the like, as these are peculiar to the status of the parties, and can only be fully dealt with in books dealing with their particular rights.

Canadian Notes.

Where a party frames an action for negligence at common law and also under the Employers' Liability Act, but at the trial attempts to develop a case at common law and fails, he will not be granted a new trial in order to try to establish a case under the Employers' Liability Act. (*Haskins* v. *Le Roi*, 9 B. C. R. 551.)

The plaintiff was paid a sum of 250 dols. by a benefit insurance society in connection with the railway, though a distinct organisation of which deceased was a member. The plaintiff gave a receipt stating that the railway company was relieved from all liability. The deceased's certificate did not profess to be an insurance against accidents, and the railway company were no party to the receipt. Held, that the receipt formed no bar to the action against the defendants, nor was there any right to deduct the amount received from the benefit society from the sum the plaintiff was entitled to as damages. (*Hicks* v. *Newport, &c. Rail. Co.*, 4 B. & S. 403, n., distinguished *Farmer* v. *Grand Trunk Rail. Co.*, 21 O. R. 299; and see *ante*, p. 54.)

The plaintiff, who was a lad of eighteen, was engaged with two men in rivetting the plates of a boiler. It was the duty of one of the three to heat the rivets, of the second to place them in position, and of the third to fasten them by means of a hydraulic hammer, which he put in operation by a lever. This man directed the plaintiff to go inside the boiler to hold back a loose stay which was coming in the way of the rivets, and the plaintiff while in the boiler was injured. Held, that the man who was using the hammer was in effect necessarily entrusted with the superintendence of the whole operation, that to his order the plaintiff was bound to conform, and that the accident having happened, as was found, owing to this man's negligence, the plaintiff was entitled to damages. (*Garland* v. *City of Toronto*, 1906, 23 A. R. 238, distinguished; *Shea* v. *Inglis* 11 O. L. R. 124.)

"The peril to life from high explosives is so great and, as shown by the evidence, the cause of their explosion frequently so obscure, that damage may fairly be anticipated as likely to ensue from the act of one who accumulates an unusual and unreasonable quantity in dangerous proximity to others. In placing it where an opportunity for damage may be created either by the nature of the substance or by fortuitous circumstance or neglect of others or other cause, he takes the chance of the happening of such other event, and cannot disconnect himself from the fairly-

Canadian Notes.

to-be-anticipated consequences of his own negligence. It hence becomes unnecessary to determine as to other agencies contributing to the result, provided it appear that neither the deceased (nor anyone whose act or omission may prove a legal bar) had any connection with it, and that he is not precluded from urging defendants' neglect." (*The Asbestos & Asbstic Co.* v. *Durand*, 30 S. C. R. 291, King, J.; and see *McArthur* v. *Dominion Cartridge Co.*, (1905) A. C. 72.)

The fact that for many years an operation has been carried on in the same way and with the same appliances without an accident, while strong evidence in the master's favour, is not conclusive, and if there is evidence that the system is defective the case must be submitted to the jury. (*Commarford* v. *Empire Limestone Co.*, 11 O. L. R. 119.)

In *Alexander* v. *Mills*, 7 O. L. R. 103, the defendant was held not responsible, inasmuch as the act of the employee which caused the accident was wholly unauthorised and opposed to the usual course or system, and that the defendant or her foreman could not be blamed for not assuming that any workman would resort to such unlikely and extraordinary measures for removing boards from the lower floor. . . . . .

The defence of *volentia* is not available under the Canadian statute to the same extent as it is under the English Act. The wording of the different sections should be noted. In the Canadian Act, R. S. O. 1897, c. 160, sect. 6, follows the English Act, sect. 3, sub-sect. 2, but has the additional words, "provided, however, that such workman shall not, by reason only of his continuance in the employment of the employer with knowledge of the defect, negligence, act, or omission which caused his injury, be deemed to have voluntarily incurred the risk of the injury." Again, sub-sect. 3 of sect. 6 of the Canadian Act differs from the corresponding section in the English Act in this respect: the Canadian Act substitutes for the words "and failed within a reasonable time to give or cause to be given" the words "and failed without reasonable excuse to give or cause to be given within a reasonable time." It will thus be seen that a workman who knows of a defect and fails within a reasonable time to give notice of it can yet recover compensation if he has had a reasonable excuse for not having given the notice; and see *Haight* v. *Workman and Ward Manufacturing Co.*, *ante*, p. 88.

Taking the Factories Act and the Workmen's Compensation Act together, it seems to be clear that where the cause of injury is the failure of the employer to comply with the requirements of the Factories Act, the defence of *volenti non fit injuria* will not be available. The proximate cause, however, of the injury must be the neglect of the employer.

All cases of this kind involve the determination of two essential facts: first, negligence on the part of the master, and second, that that negligence was the cause of the injury to the employee. Without satisfactory evidence of both these facts there is no case to go to the jury. (*Canadian Coloured Cotton Mills Co.* v. *Kerwin*, 29 S. C. R. 479, and *ante*, p. 38; *Carmahan* v. *Robert Simpson*, *ante*, p. 89, and cases on p. 91.)

The plaintiff's husband, who was working on a platform projecting a few feet from a gallery in the defendants' workshop, fell from the platform and was killed. There was no evidence to show how he fell. There was no railing or guard to the platform, but when the deceased was last seen he was standing on the platform near the gallery in a place of safety, and after that up to the time when he was found lying on the floor of the workshop, nothing had happened in connection with his work to make it necessary for him to change his position. Held, that there was no case to go to the jury. (*Brown* v. *Waterous Engine Works Co.*, 8 O. L. R. 37.)

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"I understand the effect of the decisions cited in the judgment of my learned brother MacMahon to be that, given negligence by defendants and the finding of the body of deceased in a position consistent with the injury having been caused by defendants' negligence, but no other evidence that such negligence was in fact the immediate, necessary, and direct, in other words, proximate cause of the injury, the case should not be submitted to the jury. . . . This missing link in the evidence cannot be filled by conjecture. The plaintiff must establish the proximate cause of her loss by positive testimony or by presumptions weighty, precise and consistent." (*Ibid.*, Teetzel, J.)

The defendants, manufacturers, had on their premises a private line of railway, with switches, &c. The plaintiff, a switchman in the employ of the defendants, while engaged in coupling some cars, had his foot caught either in the unpacked frog or in an unpacked space between the wing rail and the frog. Held, that the omission of the packing was a defect in the condition or arrangement of the defendants' works, machinery, or plant within the meaning of sect. 3, sub-sect. 1 of the Workmen's Compensation for Injuries Act, as well as of sect. 5, sub-sects. 2 and 3 of that Act, which applied to defendants' railway, and that it was for the jury to say on the evidence whether the plaintiff had knowledge and the defendants were ignorant of such defect. (*Cooper* v. *The Hamilton Steel and Iron Co., Limited*, 8 O. L. R. 353.)

BOOK THE THIRD.

THE

LIABILITY OF EMPLOYERS

UNDER THE

WORKMEN'S COMPENSATION ACT, 1906.

6 Edw. 7, c. 58.

CHAPTER IV.

TEXT OF THE ACT.

Section.

1. Liability of employers to workmen for injuries.
2. Time for taking proceedings.
3. Contracting out.
4. Sub-contracting.
5. Provision as to cases of bankruptcy of employer.
6. Remedies both against employer and stranger.
7. Application of Act to seamen.
8. Application of Act to industrial diseases.
9. Application to workmen in employment of Crown.
10. Appointment and remuneration of medical referees and arbitrators.
11. Detention of ships.
12. Returns as to compensation.
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Schedules.

WORKMEN'S COMPENSATION ACT, 1906.

[6 EDW. 7, c. 58.]

A.D. 1906.

AN ACT to consolidate and amend the Law with respect to Compensation to Workmen for Injuries suffered in the course of their Employment.

[21st December, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Liability of employers to workmen for injuries.

See pp. 165, 190.

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

Employment.—*Any* e., Article I. p. 165; e. of a casual nature, Article II. p. 174; e. with same employer, p. 249; continuity of e., p. 250; duration of e., p. 188; concurrent contracts of e., p. 254; same grade of e., p. 256; after accident, p. 190; seamen, p. 283.

Accident.—Article IV. p. 177; *industrial diseases included*, p. 181.

Arising out of . . .—Article V. p. 186.

Workman.—Article I. p. 165; *dependants of w.*, p. 171. Rights of w. against employer, p. 197; against principals, p. 199; against third parties, p. 198; against usurers, p. 203; against employer's estate in bankruptcy, p. 205.

Employer defined, pp. 134, 197; rights of e. against third parties, p. 235; principal's rights against employers and third parties, p. 237.

Compensation.—Liability discussed, p. 165 *et seq.* Quantum discussed, its assessment, p. 241, disposition, p. 266, and review p. 273.

(2) Provided that— See p. 190.

(*a*) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed:

One week.—Art. VI. p. 190. If less than two weeks, pp. 190, 242.

(*b*) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid: See pp. 197, 213.

Negligence.—Article IX. p. 197. Rights when compensation refused, p. 214. Rights when action dismissed, pp. 215, 280. See also sect. 1 (4), *infra*.

Option.—Article XI. p. 213. Exercised on behalf of infants, p. 214. Exercised by contracting out, Article XIII. p. 224. Not by receipt of fine, p. 218.

As to **remedy** to adopt.—Chapter XI. p. 279.

(*c*) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless See p. 208.

the injury results in death or serious and permanent disablement, be disallowed.

Serious and wilful.—Art. 3 of X. (1), p. 208. Wilful and false representations as to Industrial Diseases, p. 212.

See pp. 220, 314, 327.

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration in accordance with the Second Schedule to this Act.

Any question.—Some questions of fact, p. 220.

Compensation not to be obtained, p. 218. *Liability* discussed, p. 165 *et seq.*, its assessment, p. 241, deposit, p. 263 *et seq.*, 273.

Workman, p. 165.

Settled by arbitration.—Chapter XLI., p. 314, Procedure special to Act.

See pp. 215, 280, 326.

(4) If, within the time hereinafter in this Act limited for taking proceedings, an action is brought to recover damages independently of the Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the Court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, and may deduct from such compensation the costs or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section, when the Court assesses the compensation it shall give a certificate of

the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

Within the time.—Article VIII p. 194. **Action is brought.**—Article IX. p. 197.

Proceed to assess.—Article XI p. 213. Section construed strictly, p. 216.

Certificate of the compensation.—Pages 280, 326; form of, Rule 51.

Effect of an award. As to enforcing awards, Rules 67, 68, 69. Procedure of appeal complicated, p. 326.

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine. See p. 218.

Proceeding for a fine does not affect other remedies.—Article XI. p. 218.

2.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death: **Time for taking proceedings.** See pp. 191, 192.

Provided always that—

(*a*) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the [illegible] that the employer is not, or would [illegible] an amended notice were [illegible] hearing postponed, be [illegible] defence by the want, de[illegible] or that such want, defe[illegible]

occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

Time for taking proceedings.—Articles VII. p. 191, and VIII. p. 194.

Forms.—Appendix B. pp. 482, 483.

As to medical examination after giving notice, p. 231.

Contracting out.
See p. 224.

3.—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of

compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2) The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed. See p. 226.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme. See p. 226.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in sub-section (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause exist for See p. 226.

such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

See p. 227.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

(8) The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

Contracting out.—Article XIII. p. 227.

Extended powers may be given to Committees.—Sched. II. (16), p. 225.

Existing Schemes, p. 227. Facilities to Friendly Societies, Sched. I. (21), p. 228.

Sub-contracting.

See pp. 199, 214, 237.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken

against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work. See pp. 200, 215.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act. See p. 238.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal. See pp. 202, 238.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management. See p. 200.

Principal . . . liable.—Article IX. p. 199. Principals substituted for employers.—Page 214.

On, or in, or about.—Page 202.

Principal indemnified.—Article XV. p. 237. Notice claiming indemnity.—Rule 19—26.

Mechanical power.—Article IX. p. 202.

Contractor's liability.—Article IX. p. 202.

Provision as to cases of bankruptcy of employer.

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under See p. 203.

this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding-up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

See p. 204.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

See p. 204.
51 & 52 Vict. c. 62.
52 & 53 Vict. c. 60.

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding-up, and those Acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum

60 & 61 Vict. c. 19.

for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.

(4) In the case of the winding-up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly. See p 234. 50 & 51 Vict. c. 43.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid. See p. 206.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company. See p. 207.

Provisions as to **bankruptcy** and **winding up** of companies.—Article IX. p. 203. As to partial insurance, p. 207.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof— Remedies both against employer and stranger.

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and See pp. 198, 217, 235.

(2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be See p. 235.

entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this Act.

As to **remedy** to adopt.—Chapter XI. p. 279. Workman has rights against employer, p. 197; against principals, p. 199; against third parties, p. 198; employer has rights against third parties, p. 235; and principals have rights against employers and third parties, p. 237.

Concurrent proceedings.—Article IX. p. 199.

Notice to third parties.—Pages 19–26.

Application of Act to seamen.

See pp. 166, 283.

7.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

See p. 291.

(*a*) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:

See p. 291.

(*b*) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant:

See p. 293.

(*c*) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession

or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly: 57 & 58 Vict. c. 60.

(*d*) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable, if the owner of the ship is, under the Merchant Shipping Act, 1894, liable to pay the expenses of burial: See p. 293.

(*e*) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice: See p. 296.

(*f*) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way See p. 297.

of indemnity under the section of this Act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury:

See p. 291.

(*g*) Sub-sections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices: and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

See pp. 167, 286.

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

See pp. 167, 286.

(3) This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

As to provisions special to seamen, see Chapter XII. p. 283; for epitome, see General Index, "Seamen."

Application of Act to industrial diseases.

1 Edw. 7, c. 22.

See p. 182.

8.—(1) Where—

(i) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule

to this Act and is thereby disabled from earning full wages at the work at which he was employed; or

(ii) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(iii) the death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

(*a*) The disablement or suspension shall be treated as the happening of the accident;

Accident.—Article IV. p. 177.

(*b*) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable; See p. 212.

Falsely represented.—Article X. (b), p. 212.

(*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due: See p. 239.

Article XV., as to rights over, p. 239.

See p. 239.

Provided that—

(i) the workman or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

See p. 240.

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation;

(*d*) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable; See pp. 240, 249.

Contribution from other employers.—Article XV. p. 239.

(*e*) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due and the notice may be given notwithstanding that the workman has voluntarily left his employment; See p. 194.

Notice.—Article VII. p. 191.

(*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final. See p. 183.

Certificate of disablement.—Article IV. p. 181.

As to appointment and reference generally.—Sect. 10, *infra*, pp. 329, 340, 408. Workman submitting to medical examination.—Article XIV. p. 231.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary. See p. 183.

See p. 183. (3) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

See p. 183. (4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given: Provided that—

(*a*) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine;

(*b*) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

See p. 184. (5) In such cases and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

See Sub-sects. (1) (i) and (1) (f), *ante*.

See p. 184. (6) The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

As to above, Article IV.

See p. 228. (7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to

which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

Require . . . employers to insure. As to contracting out, p. 229.

(8) A Provisional Order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner. See p. 184.

(9) Any expenses incurred by the Secretary of State in respect of any such Order, Provisional Order, or confirming Bill shall be defrayed out of moneys provided by Parliament. See p. 184.

(10) Nothing in this section shall affect the rights of a See p. 180.

workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

As to above, Article IV.

Application to workmen in employment of Crown.
See pp. 171, 229, 287.

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act.

50 & 51 Vict. c. 67.

Service of the Crown.—Article I. p. 165.
Schemes.—Article XIII. p. 224.

Appointment and remuneration of medical referees and arbitraters.
See p. 329.

10.—(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this Act shall, subject to regulations made by the Treasury, be paid out of moneys provided by Parliament.

Medical referees.—Pages 329, 340; Rule 82, p. 408. Examination by, p. 231; but only according to regulations made by the Secretary of State, p. 232.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of County Courts under the Second Schedule to this Act shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury. See p. 330.

Arbitrator.—Page 330.

11.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any Court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the Court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly. Detention of ships. See p. 293.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in See p. 300.

relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

57 & 58 Vict. c. 60. See p. 300.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

Detention of ships.—Chapter XII. For epitome, see General Index, under title "Seamen."

Returns as to compensation.

12.—(1) Every employer in any industry to which the Secretary of State may direct that this section shall apply shall, on or before such day in every year as the Secretary of State may direct, send to the Secretary of State a correct return specifying the number of injuries in respect of which compensation has been paid by him under this Act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Secretary of State may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(2) Any regulations made by the Secretary of State containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

Definitions. See p. 197.

13. In this Act, unless the context otherwise requires,—

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person

with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Workman" does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an out worker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing; See pp. 165, 169.

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable; See p. 166.

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earn- See p. 166.

ings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

See p. 166. "Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

See p. 283 "Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

See p. 231. "Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner;

53 & 54 Vict. c. 45. 53 & 54 Vict. c. 67. "Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

See p. 166. "Out worker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority;

"County Court," "judge of the County Court," "registrar of the County Court," "plaintiff,"

and "rules of Court," as respects Scotland, mean respectively Sheriff Court, sheriff, sheriff clerk, pursuer, and act of sederunt.

Employer.—Page 197.
Workman.—Pages 165, 169.
Manual labour and **remuneration exceeding £250 a year**, p. 169.
Employment of casual nature.—Article II. p. 174.
Dependants.—Article I. p. 171.
Member of family.—Page 171.
Ship manager.—Chapter XII. p. 283.
Out worker.—Page 166.

Special provisions as to Scotland.

14. In Scotland, where a workman raises an action against his employer independently of this Act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the Sheriff Court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that Act, not be removed under that Act or otherwise to the Court of Session, nor shall it be appealed to that Court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the Second Schedule to this Act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this Act shall apply.

43 & 44 Vict. c. 42.

Provisions as to existing contracts and schemes.

60 & 61 Vict. c. 37.

See p. 227.

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for

the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

See p. 228.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.

(3) The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.

Contracting out.—Article XIII. p. 224.

Commencement and repeal.

16.—(1) This Act shall come into operation on the first day of July nineteen hundred and seven, but except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this Act.

60 & 61 Vict. c. 37. 63 & 64 Vict. c. 22.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases.

Short title.

17. This Act may be cited as the Workmen's Compensation Act, 1906.

SCHEDULES.

FIRST SCHEDULE. Section 1.

SCALE AND CONDITIONS OF COMPENSATION.

(1) The amount of compensation under this Act shall be—

Compensation.—Its assessment, p. 259, disposition, p. 266, and review, p. 273

(*c*) where death results from the injury— See p. 241.

(i) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

Earnings.—Page 247

Average weekly earnings.—Directions in Law as to, pp. 245, 247

Employer.—Pages 134, 197.

See p. 242.

(ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

Dependants.—Pages 171, 259.
Reasonable and proportionate.—Pages 171, 259.

See p. 242.

(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

Reasonable expenses.—Page 260.

See p. 242.

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound:

Total or partial.—Page 260.
Average weekly earnings.—Determination of, p. 245 *et seq.*
Not to exceed one pound.—Page 260 *et seq.*

See pp. 190, 242.

Provided that—

(*a*) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

If less than two weeks.—Article VI. p. 190.

(*b*) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings. See p. 260.

Workman under twenty-one.—Pages 173, 214, 260, 261, 271, 277, 334, 337.

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:— See pp. 243, 252.

(*a*) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

Average weekly earnings.—Directions in law for determination of, p. 245.

Casual nature.—Page 249.
Same grade.—Page 256.
Same class of employment.—Page 252.

See pp. 244, 254.

(*b*) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

Concurrent contracts.—Page 254.

See pp. 244, 250, 256.

(*c*) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

Employment by same employer.—Page 250.

See pp. 244, 248.

(*d*) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

Special expenses.—Page 248.

See p. 241.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of

the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

Allowance, partial incapacity.—Page 257.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place. See p. 231.

Notice of accident.—Page 191.
Refuses to submit to medical examination.—Article XIV. p. 231.
Suspended.—Para. 20, p. 234.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the County Court, and any sum so paid into Court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the Court in such manner as the Court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the Court shall be a sufficient discharge in respect of the amount paid in: See p. 268.

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has

no such representative, to the person to whom the expenses of medical attendance and burial are due.

Payment into Court.—In case of death, p. 268, Rule 56; in case of disability, pp. 271, 337, Rule 57; in case of lump sum, pp. 261, 267, 337, Rule 59.

Legal personal representative.—Page 270.

See p. 270.

(6) Rules of court may provide for the transfer of money paid into Court under this Act from one Court to another, whether or not the Court from which it is to be transferred is in the same part of the United Kingdom as the Court to which it is to be transferred.

Transfer of money.—Page 270.

See p. 271.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a County Court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into Court, and the provisions of this schedule with respect to sums required by this schedule to be paid into Court shall apply to sums paid into Court in pursuance of any such order.

Payments to persons under disability.—See *supra*, para. (5).

See p. 268.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into Court under this schedule, shall be settled by the County Court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into Court under this schedule, by the County Court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being

allotted partly to the total and partly to the partial dependants.

Dependant.—Pages 268, 171.

Amount payable to total and partial dependants.—Page 268.

(9) Where, on application being made in accordance with rules of court, it appears to a County Court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the Court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the Court may make such order for the variation of the former order or the award, as in the circumstances of the case the Court may think just. See p. 277.

Neglect of children or variation of circumstances.—Chapter X. p. 275.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the County Court in his name as registrar. See p. 271.

Investment of compensation.—Page 271.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums. See p. 271.

(12) No part of any money invested in the name of the See p. 271.

registrar of any County Court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the County Court.

See p. 272.

(13) Any person deriving any benefit from any moneys invested in a Post Office Savings Bank under the provisions of this Act may, nevertheless, open an account in a Post Office Savings Bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

See pp. 231, 275.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

Refuses or obstructs medical examination.—Article XIV. p. 234.
Suspended.—Page 234.

See pp. 232, 275.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Regulations for examination.—Page 234.

See p. 232

Where a workman has so submitted himself for examination by a medical practitioner, or has been

examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a County Court, on application being made to the Court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

No agreement.—Page 233.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified. See p. 233.

Medical Referee.—Page 232.
Conclusive evidence.—Page 233.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman. See pp. 233, 265.

No agreement.—Page 233.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or See p. 233.

in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Refuses or obstructs medical examination.—Article XIV. p. 231.
Suspended.—Page 234.

See p. 234. Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

See pp. 261, 273. (16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Review.—Chapter X. p. 273.

See p. 261. Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

Workman under twenty-one.—Pages 173, 260, 261, 271, 277, 334, 337.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the County Court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

See pp. 261, 267.

Redemption by lump sum must be recorded, pp. 223, 337.
Life annuity.—Appendix C.
Incapacity is permanent.—Page 262.
In any other case.—Page 262.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

See pp. 262, 267.

Ceases to reside, effect on want of claim, pp. 117, 192.

See pp. 266, 282, 332.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

Weekly payment.—Page 266.

See p. 234.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

Where compensation is suspended.—Article XIV., where applicant refuses to submit to or obstructs medical examination.

See p. 228.

(21) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

59 & 60 Vict. c. 25.

Friendly society.—Page 228.

(22) In the application of this Act to Ireland the provisions of the Court Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

41 & 42 Vict. c. 56.

SECOND SCHEDULE. Sections 1, 14.

Arbitration, &c.

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided. See p. 315.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the County Court, according to the procedure prescribed by rules of court. See p. 315.

(3) In England the matter, instead of being settled by the judge of the County Court, may, if the Lord Chancellor so authorises, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purpose of this Act, have all the powers of that judge. See p. 315.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the County Court, and the decision of the judge on any question of 52 & 53 Vict. c. 49. See p. 317.

law, either on such submission, or in any case where he himself settles the matter under this Act, or where he gives any decision or makes any order under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the judge of the County Court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the County Court.

The Arbitration Act.—Page 318.
Submit any question of law.—Page 319.
Questions of law.—Page 319.
Court of Appeal.—Page 322, Rule 71, p. 399. *When appeal to Divisional Court*, p. 323. *Appeals under sect.* 1 (4), p. 326; security for costs, p. 329.

See p. 329. (5) A judge of County Courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

Workman to submit to medical examination.—Art. XIV. p. 231.

See p. 330. (6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

See p. 330. (7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the County Court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the County Court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the judge of the County Court.

(8) In the case of the death or refusal or inability to act of an arbitrator, the judge of the County Court may, on the application of any party, appoint a new arbitrator See p. 332.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the County Court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a County Court judgment. See pp. 221, 333.

Provided that—

(*a*) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and See pp. 222, 333.

(*b*) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of Court proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum the memorandum shall only be recorded on such terms as the judge of the County Court, under the circumstances, may think just: and

(*c*) the judge of the County Court may at any time rectify the register; and See pp. 222, 334.

See pp. 222, 334.

(*d*) where it appears to the registrar of the County Court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of Court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just: and

See pp. 223, 334.

(*e*) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part. See pp. 223, 337.

As to redemption of weekly payments, pp. 261, 267.

(11) Where any matter under this Act is to be done in a County Court, or by, to, or before the judge or registrar of a County Court, then, unless the contrary intention appear, the same shall, subject to rules of Court, be done in, or by, to, or before the judge or registrar of, the County Court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of Court, without prejudice to any transfer in manner provided by rules of Court. See p. 337.

(12) The duty of a judge of County Courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of Court, be part of the duties of the County Court, and the officers of the Court shall act accordingly, and rules of Court may be made both for any purpose for which this Act authorises rules of Court to be made, and also generally for carrying into See p. 338.

effect this Act so far as it affects the County Court, or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator, and such rules may, in England, be made by the five judges of County Courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

See p. 339.

(13) No Court fee, except such as may be prescribed under paragraph (15) of the First Schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the Court prior to the award.

See pp. 266, 270, 339.

(14) Any sum awarded as compensation shall, unless paid into Court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the County Court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of Court.

See pp. 234, 340.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the

Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on County Courts or judges of County Courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into Court, and the order may exclude from the operation of provisoes (*d*) and (*e*) of paragraph (9) of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

See pp. 225, 341.

(17) In the application of this Schedule to Scotland—

See pp. 341, 342.

(*a*) "County Court judgment" as used in paragraph (9) of this Schedule means a recorded decree arbitral:

(*b*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that

39 & 40 Vict. c. 70.

it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords:

(*c*) Paragraphs (3), (4), and (8) shall not apply.

See p. 342.

(18) In the application of this Schedule to Ireland the expression "judge of the County Court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

THIRD SCHEDULE.

Section 8.
See p. 181.

Description of Disease.	Description of Process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this Schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the processes so specified.

Industrial diseases.—Article IV. p. 181.

THE LIABILITY OF EMPLOYERS

UNDER THE

WORKMEN'S COMPENSATION ACT, 1906.

6 Edw. 7, c. 58.

EPITOME OF BOOK III.

Disputes under this Act are to be settled by arbitration, and the parties to such arbitration are respectively known as the applicant and the respondent.

PART I.

Chapter V.

To establish a *right* to compensation, whatever its amount, the applicant must prove—

Article I.—That he is a person within the scope of this Act. p. 165

Article II.—That he was in an employment to which the Act applies; and p. 174

Article III.—That he was entitled to some earnings. p. 176

Article IV.—That he was injured by accident. p. 177

ARTICLE V.—That the accident arose out of and in the course of his employment. p. 186

ARTICLE VI.—That he was incapacitated by such accident for at least one week. p. 190

ARTICLE VII.—That as soon as possible he gave notice of such accident. p. 191

ARTICLE VIII.—That within six months he made a claim in respect thereof; and p. 194

ARTICLE IX.—That for such accident the respondents are persons liable within this Act. p. 197

CHAPTER VI.

In addition to traversing the evidence of the applicant on any of the foregoing points, as a matter of *defence*, the respondents, provided they have given proper notice, may also say :—

ARTICLE X. (a).—That the accident was occasioned by the serious and wilful misconduct of the workman, and that it has not resulted in death or serious and permanent disablement. p. 208

ARTICLE X. (b).—As regards industrial diseases, that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from disease. p. 212

ARTICLE XI.—That the applicant has sought other remedies, which has disentitled him to recover under the Act. p. 213

ARTICLE XII.—That they have admitted the claim and there is no subject-matter for arbitration. p. 220

ARTICLE XIII.—That the applicant has contracted out of the Act. p. 224

ARTICLE XIV.—That the applicant has refused to submit himself to medical examination. p. 231

CHAPTER VII.

Further, the respondents may say, though not as against the applicant:

ARTICLE XV.—Though liable to the applicant they are entitled to be indemnified by some other person. p. 235

PART II.

CHAPTER VIII.

The assessment of the compensation payable under the Act.

CHAPTER IX.

The disposition of the compensation:—

(*a*) To the applicant.
(*b*) Amongst dependants in case of his death.

CHAPTER X.

Review, variation and setting aside of orders as to compensation.

PART III.

Chapter XI.

As to remedy to be adopted.

Chapter XII.

Provisions special to seamen.

Chapter XIII.

Procedure special to the Act.

CHAPTER V.

THE APPLICANT MUST PROVE—

ARTICLE I.

THAT HE IS A PERSON WITHIN THE SCOPE OF THE ACT.

By sect. 1 (1) it is enacted:—

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

And by sect. 13 workman is defined as follows, also to include dependants as also defined.

"Workman" does not include any person employed otherwise than by way of manual labour whose remuneration exceeds two hundred and fifty pounds a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants or other person to whom or for whose benefit compensation is payable;

"Dependants" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively;

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son (*a*), daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

And by sect. 7 (1) the Act is applied to seamen as follows:—

7.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-

(*a*) Also child *en ventre sa mère*: *Day* v. *Markham*, 39 L. J. 161; bastards are not included: *Dickinson* v. *N. E. R. Co.*, 2 H. & C. 735.

fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew (*b*).

The result of these sections is to make the Act most comprehensive, and, with the few exceptions specifically stated, it now practically includes all who work for others for hire, domestic servants not excepted. At the same time it preserves the same salient distinction as the previous Acts in that it is limited to workmen as distinguished from independent contractors. Thus an applicant who tendered to do bricklaying for 160*l.* was held to be a workman within the Act, even though he worked on the job himself (*c*), as also a master slater (*d*), the certificated manager of a mine (*e*), a partner who worked as a foreman (*f*), two labourers who worked in a quarry and were paid so much a cubic yard, but were neither under the control of the master nor tied down to hours (*g*), and a man working under a sub-contract breaking up

(*b*) As to special provisions dealing with seamen, see *infra*, chapter xiii.

(*c*) *Simmons* v. *Fauld*, 17 T. L. R. 352.

(*d*) *McGregor* v. *Dansker*, 1899, 1 F. 536.

(*e*) *Simpson* v. *Ebbw. &c. Co.*, (1905) 1 K. B. 453. Note this was a decision under the previous Act. Probably now if such manager were receiving less than 250*l.* a year he would be held a "workman."

(*f*) *Ellis* v. *Ellis*, (1905) 1 K. B. 324.

(*g*) *Hayden* v. *Dick*, 1902, 40 Sc. L. R. 95.

steel and cinders (*h*). If, however, the relationship of master and servant exist, which is the true test of a man being a workman as distinguished from a contractor, it will not be taken away because such workman is in a superior position, or a foreman, or divides wages received in a lump for himself and others for piece-work, or even if he himself employs helpers (*k*) or finds his own plant, say a cart (*l*).

Further, when discussing an employer's liability at Common Law, we have seen that what constitutes a master sometimes involves distinctions which are extremely fine. As to these, the practitioner is referred to the note (*k*) on p. 11, and also to p. 76, where the meaning of workman is discussed in connection with its use in the Employers' Liability Act, 1880.

Unless insurance becomes more or less universal there is no doubt there will be numerous attempts, especially in private life, to evade the Act by employing people as independent contractors rather than as servants. In theory it will be simple; in theory the law is clear. The Act only applies when the relationship of employer and servant exists. The difficulty will be reducing the theory to practice, and being certain that a County Court Judge will take the view of the facts one intended or desires. Nor will the difficulty be materially lessened by the anxiety of all concerned to escape the benevolence of the Act. The Courts may set themselves against its being escaped, especially by colourable devices, and, apart from forms and expressions, may inquire what in fact were the relations between the parties. Having thus found, the finding of the Judge will be conclusive (*m*). But, independently of such considerations, each case will have its own difficulties. The law, it is true, is definite (in theory), but facts are infinite and must be ascertained—frequently with much labour—specially in every case. And until so done, no opinion as to whether such case

(*h*) *Vamplew* v. *Parkgate, &c. Co.*, 1903) 1 K. B. 851.

(*k*) *Dunlop* v. *McCready*, 1900, 2 F. 1027. *Evans* v. *Penrhyllt, &c. Co.*, 18 T. L. R. 58, is a case on the line, but the workman then had his position as such definitely recognised. See also cases under E. L. A. p. 11, *supra*.

(*l*) *Mooney* v. *Sheehan*, 37 Ir. L. T. R. 166.

(*m*) *Vamplew* v. *Parkgate &c. Co.*, *supra*.

is or is not within the Act is of any value. To give one example: The author has been asked again and again, "Are we to be responsible for window-cleaners in offices and elsewhere?" In some cases yes, in some cases no, is the correct but not very enlightening answer. If a man having his house repainted was to say to the decorator, "See the windows are cleaned," he would not be liable. On the other hand, if he was to hire a man to come and do them every Monday, he equally would be. So if he contracted with a window-cleaning company to do them regularly, there seems no reason why he should be responsible. If, however, the company proved to be a one-man company trading to get jobs under a grand name, as he knew, the Court might easily hold it was one of the colourable devices to evade the Act to which we have referred, and hold him liable. So in an office the windows might well be cleaned by a woman employed by the caretaker. If a tenant employed the caretaker, probably in most cases he would not be responsible, but if his landlord was the employer he as probably would, he being a principal within sect. 4 of the Act, and the woman being injured on premises under his control, doing work undertaken by him. If, however, the landlord occupied his own premises the case might be different. So also if the accident took place in his house instead of the office, he would not be a person liable as a principal, unless, indeed, he took boarders, when his liability might depend on how many he had and on how far he used the house as his home or for the purposes of his business. And so, without even touching vexed questions of agency, &c., we might multiply niceties *ad infinitum*, and, to be paradoxical, nothing is more simple than to advise in the abstract, nothing more impossible.

As to the exception from the definition of workman, viz.:—

> Workman does not include any person employed otherwise than by manual labour whose remuneration exceeds 250*l.* a year . . . .

it will be observed that it is a most important qualification in favour of those engaged in manual labour.

Manual labour has been discussed in reference to its use in the Employers' Liability Act, and decisions have been given as to its use

there. But it must be noted that these decisions were on a definition of workman where it was used in collocation with labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, and it was held a meaning must be attributed to it *ejusdem generis* with these occupations (*n*). Therefore their value as authorities here is considerably lessened, for it is not likely that men excluded from such definition of workman would be excluded from the present one, even were they earning 250*l.* or over—*e.g.*, the driver of a tram car (*o*), a grocer's assistant (*p*), the conductor of an omnibus (*q*), or the railway guard of a goods train (*r*). Of course, the difficulty is to imagine any of these earning 250*l.* a year, but this does not alter the principle involved.

In *Hunt* v. *G. N. R.* (*s*) Baron Pollock decided the guard's "primary duty was to use his intelligence, not his hands." The rule applied to the same facts under the present Act might possibly result differently, but the rule itself seems sound. Manual labour as opposed to headwork. Manual labour will not cease to be such because the greatest amount of intelligence is demanded, nor will headwork lose its character because more or less bodily effort is essential to make it effective. It is true there must be cases on the line where the two merge or coalesce, but a fair test will be, to what class of occupations did the case in question really belong? For instance, in the case of manual labour. The Act contemplates it being worth 250*l.* a year or over. It can only be worth so much when combined with the highest intelligence as well—*e.g.*, a compositor who sets up a law book, a fine instrument maker or machine adjuster, or a tailor's cutter out or a cook, &c. Here the primary condition of such employment and the class to which it belongs is manual labour. The intelligence applied increases it in value, but does not change it in character. On the other hand, we may have a window-dresser who gets hotter over his work than a navvy, or a bombardon player in a German band carrying an instrument as big as himself, or a commercial traveller with a bag of samples heavy

(*n*) *Cook* v. *North Metropolitan Tramways Co.*, 18 Q. B. D. 683.
(*o*) *Ibid.*
(*p*) *Bound* v. *Lawrence*, (1892) 1 Q. B. 226.
(*q*) *Morgan* v. *General Omnibus Co.*, 13 Q. B. D. 832.
(*r*) *Hunt* v. *G. N. R.*, (1891) 1 Q. B. 601.
(*s*) (1891) 1 Q. B. 601.

enough for a Sandow, where the expenditure of no little physical power is essential to their success, and yet all of whom would be insulted on the instant if it was suggested they got their living by manual labour.

It is not likely that on shore many serious difficulties will arise. The 250*l.* is pretty exclusive, but in the case of those at sea it may be otherwise. Perhaps on the large ocean liners, where duties are well defined, there may be little difficulty, but in the more general trade, where profits are good and duties irregular, there may be considerable doubt and no little dispute. On these cases it is impossible to advise beforehand. Like similar ones on land, they can only be determined when the facts peculiar to them have first been carefully ascertained.

By sect. 9 it is provided the Act is not to apply to persons in the naval or military service of the Crown:—

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

Dependants.—Those included in the term dependants are now so accurately ascertained there seems little scope for doubt or dispute. And it will be observed the new definition is considerably wider than the previous one by the addition of the words "*or would, but for the incapacity due to the accident, have been so dependent.*" To recover, dependants must also prove they were "*wholly or in part dependent upon the earnings of the workman at the time of his death.*" In case there are more than one it will be for the arbitrator to apportion the compensation amongst them (*t*), and

(*t*) *Manchester* v. *Coulton Iron Co.*, 89 L. T. 730.

the chief, if not only, difference to be made in case of partial dependency is that other sources of income must also be taken into account (*i*), and by para. (1) (a) (ii) of the First Schedule the compensation must be reasonable and proportionate to their injury.

A fairly broad meaning has been given to the words "dependent upon." In fact they have almost been read as if they were, "received benefit from." In a full House of Lords the question was fully discussed in *Davis* v. *Main Colliery Co.* (*j*). There a boy paid his wages to a common fund, which, after providing for his keep, left a surplus which went to the maintenance of his family. On his being killed, his father was held entitled to compensation as being in part dependent, to the extent of such surplus, and even where the family's earnings amounted to 2*l.* 12*s.* 6*d.* a week without the deceased's contribution, the father was also held to be entitled, and the County Court Judge's decision, that as 2*l.* 12*s.* 6*d.* a week was higher than the standard earnings in the neighbourhood, the man could not recover, was reversed (*k*).

In explanation of such decision, it is practically now settled, dependency is not negatived by the applicant being able to subsist without assistance (*l*), and on these lines we have the Scotch case of *Cunningham* v. *M'Gregor* (*m*), where a widow, living apart from her husband and not receiving more than 5*l.* a year from him, was yet held to have been wholly dependent. So also a woman who had been deserted by her husband for four years (*n*), and *à fortiori* a woman whose husband had left her to find work, were held entitled (*o*); but it was decided otherwise in the case of a widow who had been separated from her husband for fourteen years, and had been supported by an illegitimate son (*p*).

Nor will dependants lose their rights to compensation because the deceased in his lifetime has by insurance or otherwise made pro-

(*i*) *Osmond* v. *Campbell*, (1905) 2 K. B. 852.

(*j*) (1900) A. C. 358. See also *Simmons* v. *White*, (1899) 1 Q. B. 1005.

(*k*) *French* v. *Underwood*, 19 T. L. R. 416.

(*l*) *Howells* v. *Vivian*, 85 L. T. 529. *French* v. *Underwood*, 19 T. L. R. 416, is a very strong case.

(*m*) 3 F. 775.

(*n*) *Sneddon* v. *Addie*, 6 F. 992.

(*o*) *Coulthard* v. *Consett Iron Co.*, (1905) 2 K. B. 869.

(*p*) *Turner* v. *Whitefield*, 6 F. 822; and see also *Moyes* v. *Dixon*, 7 F. 386, where a daughter recovered.

vision for them if, in fact, up till the time of his death they were wholly or in part dependent on his earnings (*q*).

So if before his death the deceased has received weekly or other payments, the applicants will still be entitled as in case of death, but they will have to give credit for the amounts actually received by the deceased (*r*). On the other hand dependency must be at the date of death, and so a man in a workhouse can prove no right to compensation (*s*).

It has been settled that the Court will re-open agreements obtained by misrepresentation (*t*), and now by para. (10), Schedule II., no agreement is to be effective unless registered under the Act, and by para. (9) (b) and (c) fullest powers are given to the judge of the County Court where such agreement has to be registered to enquire into the justness of the agreement and act accordingly.

The decision in the Irish case of *O'Donovan* v. *Cameron* (*u*) that a widow, wholly dependent, who died before making any claim, could pass no rights to her representatives, has been extended in the County Court case of *Harvey* v. *N. E. Marine Engineering Co.* (*x*) to where the widow died before an award was made. The reason given, *actio personalis moritur cum persona*, may be sufficient, but it would seem doubtful. It may be noted that the question of dependency is one of fact, and it may be stated here, once and for all, that the findings of arbitrators as to facts are only set aside on the rarest possible occasions and on the strongest possible evidence.

(*q*) *Pryce* v. *Penrikyber, &c. Co.*, (1902) 1 K. B. 221.
(*r*) *O'Keefe* v. *Lovatt*, 18 T. L. R. 57.
(*s*) *Rees* v. *Penrikyber, &c. Co.*, (1903) 1 K. B. 259.
(*t*) *Crossan* v. *The Caledon, &c. Co.*, H. L., (1906) A. C.
(*u*) 1901, 2 Ir. R. 633.
(*x*) 113 L. T. J. 499.

STOP PRESS NOTE.

Page 173, *line* 4 *from bottom* :—

Since printing the above, the doubt here expressed has now been set at rest. In the case of *Darlington* v. *Roscoe* (23 T. L. R. 167) the Court of Appeal have held the maxim *Actio personalis moritur cum persona* has no application under the Act, and that a claim once made the right rests for the benefit of the dependant's estate, even if such dependant die before award made. (See also page 340.)

ARTICLE II.

THAT HE WAS IN AN EMPLOYMENT TO WHICH THE ACT APPLIES.

Formerly the right of a workman to compensation depended on the *place where* and the *persons with whom* he was employed in certain specified trades or businesses. These qualifications are now swept away, and in place of them substituted the comprehensive enactment of sect. 1 (1):—"If in *any* employment personal injury . . . . is caused to a workman his employer shall . . . . be liable to pay compensation . . . .", and by sect. 7 *any* employment will now include service at sea.

From these sections it will be seen that the Act practically extends to every class of employment, and that the limitation of those to benefit is to be found not in the nature of the employment but in those to be included in the definition of "workman." We have referred to this in the preceding article; but the one exception to be noted is that "workman" does not include "a person whose employment is of a casual nature, and who is employed otherwise than for the purposes of the employer's trade or business" (*a*).

Both these conditions must be present—viz., the employment must be of a casual nature, and it must not be in the employer's trade or business, *i.e.*, an employer will be liable to every servant he employs in his trade or business, whether casual or otherwise, but in the case of those he employs outside his trade or business, he will not be liable if he only employs them casually and not regularly.

What employments will be held to be "of a casual nature" it is impossible to forecast. The very meaning of casual labour is

(*a*) As regards local or other public authorities, their trade or business is thus defined by sect. 13: "The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this Act, be treated as the trade or business of the authority."

chance labour, as opposed to regular or arranged employment. A casual labourer, as a rule, is a man who asks for a job, gets it, and goes straight on with it until he finishes it. There is no idea of continuity involved in it, and no provisions contemplated for future work (*b*). Thus a man who asks for a job to weed my garden and is told to get it done clearly is a casual or chance labourer. This is hardly the case if I tell him to come the next day, or even to come in the afternoon of the same day. Then his engagement is not a chance but pre-arranged contract of employment.

But the Act does not refer to casual labourers, but says that "workman" shall not include "a person whose employment is of a casual nature." What employments are or are not of a casual nature? Is that of a charwoman such, or that of a market-gardener or a golf caddie, or that of a beggar one gives a job to out of charity, or a handyman you get in for a day to help in the house? Will the test of an employment being of a casual nature be that, as a rule, the contract for it is made on the spot, that it is executed forthwith, and that it rarely or never exceeds the day's work. But if any such tests are applied, we may well have the same employment to-day held as of a casual nature, and the following day the reverse. *E.g.*, how would the man be regarded who plied for hire for taking one about in a bath chair and was usually booked by the hotel porter the previous evening? If referred to the nature of employments generally the definition is hopeless. But, on the other hand, if the Courts hold that employment, as here used, is used with a specific and not generic meaning, and refers rather to each particular job than to any class of jobs as a whole, it may be more satisfactory. If this is so each case will have to be decided on its own merits, and probably the governing principle will be the same as before: that employment is of a casual nature which is chance employment as contrasted with a pre-arranged employment, and as a rule is entered into on the spot and forthwith carried to completion (*c*).

(*b*) The rights of such a labourer were discussed in *Bartlett* v. *Tutton*, (1902) 1 K. B. 72.

(*c*) See also Accident, which is a word from the same root as casual.

ARTICLE III.

THAT HE WAS ENTITLED TO SOME EARNINGS.

Earnings are the basis on which compensation is assessed. How such compensation is assessed will be dealt with in Chapter VIII. At present we are only considering what an applicant must prove to establish his right to some compensation, great or small. And to do this he must show he is entitled to some earnings or wages or the money equivalent of wages (*a*). His right will not depend on the amount he has already received, nor even on an amount being agreed upon; if nothing has been agreed, it will be presumed he was working at the ordinary market rate (*b*); but it must be proved he was working for earnings, and not merely for tuition or instruction as an apprentice (*c*), nor through good nature, as a man who gives his assistance voluntarily.

(*a*) Dictum of A. L. Smith, M.R., in *Pomphrey* v. *Southwark Press*, (1901) 1 K. B. 86.

(*b*) *Jones* v. *Walker*, 1899, 105 L. T. 579.

(*c*) *Pomphrey* v. *Southwark Press*, *supra*; *Noel* v. *Redruth Foundry Co.*, 12 T. L. R. 248, decided under E. L. A. 1880, p. 55, *ante*.

ARTICLE IV.

THAT HE WAS INJURED BY ACCIDENT.

When a liability, perhaps involving hundreds of pounds, turns on the precise meaning of a word, that meaning is bound to be discussed and argued and quarrelled over to an extent quite incommensurate with its intrinsic importance. This has been the case with the word accident, from the same root as casual, another word soon to be much discussed. Now, for two reasons, the question what is to be understood by the term has been much simplified.

First, the House of Lords, in *Fenton* v. *Thorley* (*a*), have given the widest possible meaning to the word accident when used in ordinary cases; and

Second, industrial diseases, which promised to be so fruitful of difficulties, have been definitely dealt with by sect. 8 of the present Act.

In *Fenton* v. *Thorley* (*a*) the facts were simple. A workman wanted to open a lid. To do so he had to turn a wheel. In straining to turn this wheel he ruptured himself. Was this an accident within the meaning of the Act? The County Court Judge and the Court of Appeal, following *Hensey* v. *White* (*b*), held it was not, and the House of Lords, overruling this case, decided it was. The essential principle and foundation of their judgment was that no arbitrary, legal, technical or contractual meaning was to be given to the word accident, but that it was to be regarded as used in its popular or ordinary sense. So whilst in many cases the *causa proxima*, as opposed to the *causa causans*, might alone give a right of action, in this Act no such distinction could be made. Further, accident might mean an accident external to, distinct from, or in addition to, the injury to the

(*a*) (1903) A. C. 443. (*b*) (1900) 1 Q. B. 481.

man (*c*), or the accident might mean, as in this case, nothing wrong or no mishap apart from the actual injury sustained by the man himself. The accident was not the lid sticking; the accident was the man rupturing himself. But all such cases were equally included in the Act.

Along with this very broad generalization should be read the limitation given by Henn Collins, M.R., in *Steel* v. *Cammell, Laird & Co.* (*d*), where, reviewing the above case, he states:—"It seems to me that the provisions of sect. 2 of the Act show that what is dealt with are cases in which a date can be fixed as that on which the injury came about," and the test first suggested by the author that an accident, whether external to the man or otherwise, must be caused as a definite event at a definite time has now the sanction of the Court of Appeal.

Although it sounds satisfactory that the word accident is to have its popular or ordinary meaning, and although it would be a fair test that the applicant had a case within the Act if, in popular parlance, it would be correct to say he was injured by accident, yet we are confronted with our old difficulties when we try to find precisely what the word accident does *popularly* mean.

Dr. Johnson defines accident as that which happens unforeseen; a casualty; a chance; and accidental as something fortuitous.

A casualty he defines as an accident—a thing happening by chance, not design; and fortuitous he defines as accidentally, casually, by chance. When we read these illuminating definitions we are inclined to agree with Horne Tooke that abstract nouns convey very little meaning except so far as they relate back to some definite concrete fact. How much further are we carried by being told an accident is a casualty, a fortuitous circumstance, or that a casualty is an accident, &c.? In fact, etymologically, accident and casualty virtually mean the same thing, because they are from the same Latin root *Cado*, one with a prefix and the other without, and it would be just as helpful to say an accident is an accident, as that an accident is a casualty. And it is this difficulty of defining a word apart from the facts to which it is applied that

(*c*) As the case of a man killed by lightning. This might well have been held by act of God, but as he was working in an exposed position, his case was held to be within the Act: *Andrews* v. *Failsworth*, (1904) 2 K. B. 32.

(*d*) (1905) 2 K. B. 232.

makes the reasoning of the judges so unconvincing whilst their conclusions are so satisfactory. Without, therefore, going further into the meaning of the word accident, we will briefly consider an epitome of those cases where its meaning has been involved.

A cursory perusal of these should enable the practitioner to at once decide whether a case on which he has to advise comes within the Act or not.

The leading authority, *Fenton* v. *Thorley* (*f*), we have already discussed. It is somewhat similar to the earlier approved cases of *Timmins* v. *Leeds Forge Co.* (*g*), where a man strained his back in lifting a plank which unexpectedly stuck owing to frost; *Boardman* v. *Scott* (*h*), where a man strained himself in adjusting a beam he was carrying; and *Stuart* v. *Wilsons, &c. Co.* (*i*), where a miner injured himself trying to replace a derailed hutch; and it overruled *Hensey* v. *White* (*k*), where a man trying to start a fly-wheel, owing to his diseased condition, ruptured himself; and by inference, *Roper* v. *Greenwood* (*l*), where a woman, suffering from *prolapsus uteri*, injured herself making boxes, and where both had been held disentitled. Whether *Walker* v. *Lilleshall Coal Co.* (*m*) would have been reversed would now be a nice point. There a man with a sore finger, knowing it to be sore, put it into poison which he knew to be poison, and was poisoned, and it was decided he was not injured by accident. Perhaps the old objection to the theory of *volentia* might now be called to his assistance, and he might plead that his justification for doing such a foolish thing was "his poverty, not his will, compelled him." If he then added, "and he had hoped it would be all right," under the benevolent construction of a benevolent Act, he might probably recover. *Steel* v. *Cammell, Laird & Co.* (*n*) is a case of lead poisoning by a gradual process, and where the Court of Appeal, for the reason given by the Master of the Rolls, quoted above, dismissed the claim. Now that such diseases are specially provided for by sect. 8, this and the similar cases of *Brintons* v. *Turvey* (*o*) and *Higgins* v. *Campbell* (*p*), dealing

(*f*) (1903) A. C. 443.
(*g*) 83 L. T. 120.
(*h*) (1902) 1 K. B. 43.
(*i*) 5 F. 120.
(*k*) (1901) 1 Q. B. 491.
(*l*) 83 L. T. 471.
(*m*) (1900) 1 Q. B. 481.
(*n*) (1905) 2 K. B. 232.
(*o*) (1905) A. C. 230.
(*p*) (1904) 1 K. B. 328.

with anthrax, lose much of their import At the same time it is provided by

Section 8.—(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act.

Hence the principles involved in the foregoing cases may be some guide in dealing with cases not thus specifically provided for, more particularly observing that the idea of a definite event at a definite time should be kept in view, as in the anthrax case (*q*). Thus Cozens-Hardy, L.J., when referring to it in the later case of lead poisoning (*r*), said, "In the anthrax case the impact of the bacillus upon the particular spot where the disease developed was proved as a fact. The source of the bacillus was known, the place at which it struck the subject was known, and the accident was known."

The question whether the death of a workman resulted from or has been accelerated by accident is a question of fact (*s*). In *Wicks* v. *Dowell* (*t*) a workman, whilst standing by an open hatchway of a ship, was seized with an epileptic fit, fell into the hold, and was seriously injured. It was held he was injured by an accident within the meaning of the Act, and that the accident arose out of and in the course of his employment.

In *Winspear* v. *Accident Insurance Co.* (*u*), a plaintiff recovered under an insurance policy in very similar circumstances.

So also when death occurs some time after the accident, nice questions may arise for the arbitrator as to whether the accident or some other matter was the *causa proxima* of such death. For the consideration of these points the practitioner is referred to *Isitt* v. *Railway Passengers' Assurance Co.* (*x*), where the subject was discussed.

In *Durnham* v. *Clare* (*y*), where a man was injured by a pipe

(*q*) *Brintons* v. *Turvey*, *supra*.
(*r*) *Steel* v. *Cammell, Laird & Co.*, *supra*.
(*s*) *Warnock* v. *Glasgow, &c. Co.*, 6 F. 474.
(*t*) (1905) 2 K. B. 225.
(*u*) 1880, 6 Q. B. D. 42.
(*x*) (1899) 22 Q. B. D. 504.
(*y*) 18 T. L. R. 645.

falling on his foot on the 2nd September, causing erysipelas to set in on the 17th, resulting in death on the 27th, it was held his death was due to accident. So in *Lloyd* v. *Sugg* (*z*), where an undoubted accident took place through a fellow workman striking awry, the applicant was held entitled, though the accident was made far more serious through his unsound physical condition.

In *Marshall* v. *East Holywell Coal Co.* (*a*), gradual injury in a mine through coal-dust working into the hand or knee was held not to be an accident (this class of injury is now provided for specially by sect. 8); but where a piece of coal worked under the skin of a miner and killed him it was decided otherwise (*b*). Again, we should observe that though the determination of the meaning of the word accident is a matter of law, what is an accident in particular cases is a question of fact.

Next as to Industrial Diseases. By sect. 8 the Act is applied to certain industrial diseases, specified in Schedule III. as follows:—

Description of Disease.	Description of Process.
Anthrax	Handling of wool, hair, bristles, hides and skins.
Lead poisoning or its sequelæ	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ.	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ.	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

Where regulations or special rules made under any Act of Parliament for the protection of persons employed in any industry against the risk

(*z*) (1900) 1 Q. B. 481. See also the similar case of *Golder* v. *Cal. R. Co.*, 5 F. 123, where a man was suffering from a disease likely to prove fatal, but the effect of which was accelerated by the accident.

(*a*) 21 T. L. R. 494.

(*b*) *Thompson* v. *Aslington Coal Co.*, 84 L. T. 412.

of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the Secretary of State otherwise directs, include only the processes so specified.

By sub-sect. (c) of this sect. 8, this list, by order of the Secretary of State, may be extended to include other diseases, and by the special provisions of this section such diseases are to be treated as accidents within the Act.

8.—(1) Where—

(i) the certifying surgeon(*c*) appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act and is thereby disabled from earning full wages at the work at which he was employed: or

(ii) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(iii) the death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease or such suspension as aforesaid

(*c*) His name and address must be affixed in every factory and workshop. Sect. 128, Factory Act, 1901.

were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications :—

(a) The disablement or suspension shall be treated as the happening of the accident;

(f) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the Secretary of State be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the Third Schedule to this Act, and the disease contracted is the disease in the first column of that Schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The Secretary of State may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given : Provided that—

(a) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disable-

ment shall be such date as the medical referee may determine:

(b) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the Secretary of State may direct, a medical practitioner appointed by the Secretary of State for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The Secretary of State may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(8) A Provisional Order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the Bill confirming any such Order is pending in either House of Parliament, a petition is presented against the Order, the Bill may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of Private Bills, and any Act confirming any Provisional Order under this section may be repealed, altered, or amended by a Provisional Order made and confirmed in like manner.

(9) Any expenses incurred by the Secretary of State in respect of any such Order, Provisional Order, or confirming Bill shall be defrayed out of moneys provided by Parliament.

The result of these sub-sections and sub-divisions may be epitomised as follows:—By sub-sect. (1), when the certifying surgeon certifies that a workman is (i) disabled, (ii) suspended, or (iii) that his death has been due to an industrial disease as specified, and that it has been contracted within *twelve* months, then by sub-division (a) *the disablement, or suspension, shall be treated as the happening of the accident.*

Sub-division (b) provides that compensation is not to be payable to a workman who has made wilful misrepresentations as to not having previously suffered from such disease. (See Article X. (b).)

Sub-division (c) then provides for compensation being recoverable from the employer who last employed the workman during the previous twelve months, and provisoes (i), (ii), and (iii) are clauses enabling such employer to obtain indemnity or contribution from other employers within the same twelve months in whose service the disease was wholly or in part contracted. (See Article XV.)

Sub-divisions (d), (e), and (f) provide for the calculation of compensation on the basis of wages earned with the employer liable to make it, for notice, and for questioning the decision of the certifying surgeon. (As to notice, see Article VII.)

Sub-sect. (2) is as to burden of proof; sub-sect. (3) as to the making of rules, &c.; sub-sect. (4) as to when disablement, &c. is to date from; sub-sect. (5) as to medical practitioners; sub-sect. (6) as to extension of Act to other diseases; sub-sect. (7) as to compulsory insurance in certain industries (see Article XIII.); sub-sects. (8) and (9) as to Provisional Orders; and by sub-sect. (10) we have seen that diseases which apart from this section would be accidents under the Act are still to be treated as such. Save as thus modified the provisions of the Act will presumably apply. This section provides an artificial test of what is an accident. Once let this be satisfied, then in all other respects, the machinery of the Act thus set in motion, the rights, liabilities and duties of the parties, and the procedure for determining them, will be the same as in ordinary cases.

ARTICLE V.

THAT THE ACCIDENT *AROSE OUT OF, AND IN THE COURSE OF,* HIS EMPLOYMENT.

This is a question of fact, the burden of proof of which lies on the applicant (*a*).

In cases before them, the Courts have given a fairly liberal interpretation to these words, where a workman, *bonâ fide* acting in the interests of his master, has, in more or less of an emergency, been injured in doing something not exactly within the scope of his employment.

Thus, stopping a runaway horse (*b*), and trying to save the life of a fellow-servant, being overpowered by choke-damp when cleaning out an old shaft (*c*), were held within the section; and even a boy, who mistakenly moved a point lever to prevent, as he thought, an accident on a branch railway line, was also held entitled (*d*). So where labourers and other inferior servants obey orders of those in a higher position, the Courts will not scrutinize too closely whether such orders were exactly those they were engaged to obey. Thus a labourer so assisting an apprentice to right some machinery in motion, and injured, was held entitled, though such assistance was not part of his work (*e*). And the same was held in the case of a general utility boy who was injured when doing something he was told to do, by one not in authority (*f*), and also in that of a boy ordered to do one class of work who changed with another and was injured while doing it (*g*).

So also a carpenter who replaced a belt to a grindstone, although

(*a*) *McNicholas* v. *Dawson*, (1899) 1 Q. B. 773.

(*b*) *Rees* v. *Thomas*, (1899) 1 Q. B. 1015.

(*c*) *Matthews* v. *Bedworth*, 106 L. T. 485; also *London and Edinburgh, &c. Co.* v. *Brown*, 7 F. 24.

(*d*) *Harrison* v. *Whitaker*, 16 T. L. R. 108.

(*e*) *Statham* v. *Galloway*, 109 L. T. 153.

(*f*) *Brown* v. *Scott*, 1899, Times, June 12.

(*g*) *Cambrook* v. *George*, 1903, 111 L. T. J. 550, C. C.

ordered not to touch machinery, and was injured, was held to be doing work arising out of his employment (*h*).

But, on the other hand, where a potter's boy, told not to touch machinery, finding himself with nothing to do, proceeded to clean a machine, and was injured in consequence, he was held not entitled, as it was no part of his duty at all to so clean machinery (*i*). So also a girl who started a machine which it was not her business to interfere with (*k*); and a labourer ordered to clear a roadway of a mine, who was killed by trying to remove a piece of coal from the roof (*l*).

When a man is found dead under conditions where it is as probable he may as may not have been acting within the scope of his employment (*m*), his representatives will be entitled to recover, and this was similarly decided in a case where deceased, who was being carried from his work, fell out of the carriage and was killed whilst apparently putting a basket on the rack (*n*).

If a workman is injured when doing something independent of his work, as, for instance, a ticket collector who gets on a footboard to have a private chat with a lady friend, and is injured in consequence, he is clearly not entitled (*o*). So if his intention is simply to relieve nature (*p*), and similarly a man, working in a church, who found the door locked and tried to climb over some spiked rails and was hurt, was held not to be entitled (*q*), and so a miner's boy who had been suspended and was injured when staying about the workings (*r*).

So, clearly, an accident cannot be said to arise out of, or in the

(*h*) *Whitehead* v. *Reader*, 84 L. T. 514.

(*i*) *Lowe* v. *Pearson*, (1899) 1 Q. B. 261.

(*k*) *Losh* v. *Richard Evans & Co.*, 1902, 19 T. L. R. 142.

(*l*) *Edwards* v. *International Coal Co.*, 1899, Times, Nov. 13.

(*m*) *McNicholas* v. *Dawson*, 1899) 1 Q. B. 773. But the burden of proof will be otherwise if the cause of the accident was something outside the scope of the man's employment. *Edwards* v. *International Coal Co.*, Times, Nov. 13, 1899.

(*n*) *Pomfret* v. *L. & Y. Rly. Co.*, 1903, 19 T. L. R. 649.

(*o*) *Smith* v. *L. & Y. Rly. Co.*, 1898, 15 T. L. R. 64.

(*p*) *Pearce* v. *L. & S. W. R.*, Times, Nov. 21, 1899, C. C. This is hardly in consonance with later decisions.

(*q*) *Gibson* v. *Wilson*, 3 F. 661, Ct. of Ses.

(*r*) *Smith* v. *South Normanton Colliery Co.*, (1903) 1 K. B. 200.

course of the employment when it is occasioned either by the man himself, or his fellow-workers, deliberately playing the fool (*s*); but mere negligence is not enough to disentitle him, unless it should practically amount to serious and wilful misconduct, of which see *infra*, Article XI., and the burden of proof of which is on the employer.

The case of *McIntyre* v. *Rodgers* (*ss*) is rather on the line. There a workman was wrongly using a brush belonging to a fellow-workman. The latter seizing it roughly, caused him to injure himself. The accident was held to be one arising out of, and in the course of, his employment. So also an accident has been held to arise out of the employment if the *causa causans* has been an epileptic fit (*t*), and also where the injury has been occasioned by the malicious act of a third party, as throwing a stone at an engine driver (*u*).

Questions have frequently arisen as to whether accidents taking place other than in actual working time are to be considered within the purview of the Act. As a rule, the period for which an employer is liable is co-extensive with the time the workman is engaged (*v*) in his work, but this strict rule is somewhat modified, not in principle, but in the actual practice of every-day life.

In the unreported case of *Cross, Tetley & Co.* v. *Catterall* in the House of Lords, referred to in *Sharp* v. *Johnson* ((1905) 2 K. B. p. 145), Lord Halsbury appears to have said that, where a workman is doing something on behalf of his employers essential to the work he is employed to do, the moment of beginning actual work is not the true test of the time when the employment commences.

This principle was adopted in *Sharp* v. *Johnson* (*w*). Here certain workmen, having to come by train, arrived usually twenty minutes before actual working time commenced. It was, however, the practice for men on arriving to leave on the window ledge of the clerk's office their tickets showing they had arrived. Whilst

(*s*) *Burrel* v. *Avis*, 106 L. T. 61; *Falconer* v. *London and Glasgow Engineering Co.*, 3 F. 564, Ct. of Ses.; *Armitage* v. *L. & Y. Rly.*, C. A. 1902, 2 K. B. 178 (a boy hit in the eye by a piece of iron thrown by another boy, who intended it for someone else).

(*ss*) 6 F. 176.

(*t*) *Wilkes* v. *Dowell & Co.*, (1905) 2 K. B. 225.

(*u*) *Challis* v. *L. & S. W. Rly.*, (1905) 2 K. B. 154.

(*v*) *Benson* v. *L. & Y. R.*, (1904) 1 K. B. 242.

(*w*) (1905) 2 K. B. 139.

doing this one of them was injured. The County Court Judge, having regard to the time when the accident happened, held it did not arise out of and in the course of the employment. The Court of Appeal, however, paying more regard to what the man was doing rather than to the time when it was done, reversed his decision and held it did. Their chief difficulty was how to get over the County Court Judge's finding of fact. They did so by holding that he had obviously misdirected himself. He had proceeded on the assumption that for the purposes of the Act a workman's employment cannot be said to have commenced until actual work was started, and this was a wrong conclusion in law. Hence the result, and the reasonable result, of this case is that the time of commencing or leaving off actual work is, after all, only one element in a contract of employment.

Thus, in another case, a miner, who, whilst going to his work, slipped on rails belonging to the mine and broke his leg, recovered (*x*). Where workmen were carried to their particular work by a railway company their employment was held to have commenced when they presented themselves for carriage (*y*). So employment has been held to include dinner hour, even though no wages were paid for such time (*z*), and tea time (*a*).

On the other hand, where colliery owners provided a train on their line which their men could use or not, as they liked, for going home by, it was held that being so carried could not be said to be connected with their employment (*b*). Likewise where contractors for a railway obtained permission for their men to walk along such railway to their work, it was held (Romer, L.J., dissenting) that a man killed when so going to his work was not injured in the course of his employment (*c*).

(*x*) *Mackenzie* v. *Coltness Iron Co.*, 6 F. 8.

(*y*) *Holmes* v. *G. N. Rly.*, (1900) 2 Q. B. 409.

(*z*) *Blovelt* v. *Sawyer*, (1904) 1 K. B. 271.

(*a*) *Earnshaw* v. *L. & Y. Rly.*, 115 L. T. J. 89, C. C.

(*b*) *Davies* v. *Rhymney Iron Co.*, 16 T. L. R. 329.

(*c*) *Holness* v. *Mackay and Davies*, (1899) 2 Q. B. 319.

ARTICLE VI.

THAT HE WAS INCAPACITATED BY SUCH ACCIDENT FOR AT LEAST ONE WEEK.

The following are the material Sections of the Act :—

1.—(1) If in any employment personal injury by accident arising out of, and in the course of the employment, is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2) Provided that—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

And this is further modified by the proviso to para. (1) (b) of Schedule I. as follows :—

Provided that—

(a) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week.

Where a workman is disabled, but his employer still finds him continuous work at his full wages, he satisfies the requirements of this section, and is none the less entitled under the Act, and the County Court Judge should make a declaration as to the liability of the employer and then adjourn the question of the amount and duration of the compensation until such time as it has to be settled (*a*).

(*a*) *Chandler* v. *Smith*, (1899) 2 Q. B. 506.

ARTICLE VII.

THAT AS SOON AS POSSIBLE HE GAVE NOTICE OF SUCH ACCIDENT.

AND

ARTICLE VIII.

THAT WITHIN SIX MONTHS HE MADE A CLAIM IN RESPECT THEREOF.

2.—(1) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

(a) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the

United Kingdom, or other reasonable cause; and

(b) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

It must be noted that the giving the notice and making the claim under this section are conditions precedent, and their omission, except as provided, fatal to recovering.

The formalities as to notice have been fully discussed on p. 61, when dealing with the notice to be given under the Employers' Liability Act, 1880, and will apply here, as practically the notice to be given under the present Act is the same as under that Act, though small verbal changes have been made in the wording of the present sub-sects. 2, 3, and 4 with a view to neatness and conciseness, and apparently without intending to effect any change of meaning.

Two great differences are to be observed.

Under the Employers' Liability Act, 1880, notices have to be given within six weeks, whilst under this Act as soon as practicable, and before the applicant leaves voluntarily. It will be further observed that the proviso in this Act is much wider than under the Employers' Liability Act. In that Act want of notice was fatal, as also were notices out of time or defective in necessary particulars. Under this Act it will be seen that virtually an employer can only avail himself of a defective notice or want of notice when he has been so actually prejudiced that neither amendment nor postponement of trial will help him. For instance, if he has been left in ignorance of the accident, and so has lost the benefit of his indemnity through not having given notice himself to his insurers (*a*). But even if so prejudiced, yet if the workman can prove that the want of or defect or inaccuracy in his notice was occasioned by mistake or other reasonable cause, he cannot even then avail himself of this defence (*a*). If, in fact, the employer know of the accident, it is difficult to see how he can ever be really prejudiced by want of formal notice, and where a foreman had given the applicant small sums, and the employer himself had advised him to go to the hospital, the County Court Judge seems to have been clearly right in finding that he was not prejudiced by want of notice (*b*).

So where failure to give notice had been occasioned by a workman not realizing how serious his injuries were and his intending to make no claim, it was held a valid excuse for his not so doing (*c*). But in all cases it is a matter for the County Court Judge to decide whether the employer has been prejudiced, or whether the want, defect or inaccuracy was occasioned by mistake, absence or other reasonable cause. Such decision, being on a question of fact, will be final; but, as in all questions of facts, he cannot assume them, but must hear the evidence by which they are proved (*cc*).

(*a*) *Barker* v. *Holmes*, 1904, 117 L. T. J. 158, C. C.

(*b*) *Beadle* v. *Milton and others*, 114 L. T. 550, C. C.

(*c*) *Rankine* v. *Alloa Coal Co.*, 6 F. 375.

(*cc*) *M'Lean* v. *Carse & Holmes*, 1899, 1 F. 878.

In the case of industrial diseases the rules as to notice have been modified as follows :—

> (c) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

Making a claim within six months is also a condition precedent to recovering. It has been argued that by making a claim was meant the initiation of arbitration proceedings. This view was disposed of in *Powell* v. *Main Colliery Co.* (*d*), where the House of Lords held that the words *claim for compensation* meant claim for compensation and nothing else, and that the following was sufficient :—

> "To the Main Colliery Company, Limited. Take notice that I claim the sum of fifteen shillings per week from the 4th day of January, 1899, until such date as I shall be able to resume work, as compensation for injury received by me on the 21st December, 1898, at your colliery at Bryneock.—(Signed) William Powell."

To the objection that, having made such claim, the applicant could then lie by and indefinitely keep the action hanging over the head of the employer, it was replied the employer could himself compel the arbitration to be proceeded with, and this is now provided for by rules to this effect. (See Part III., B.)

Thus, if the claim for compensation be made within six months, and it must be so made, it is not necessary that actual proceedings should be commenced.

So now it has been settled the claim need not be in writing.

(*d*) (1900) A. C. 366

In *Lowe* v. *Myers* (*e*) an engineer was injured by a blow on his head which, though trifling at first, ultimately developed into lunacy. In disputing the claim the employer relied on no claim having been made in time, and on a receipt for 2*l.* given in settlement. The County Court Judge having decided here was no claim, the Court of Appeal sent the case back for rehearing, on the ground the receipt itself was some evidence of a claim having been made, and that there was no necessity for such claim to be in writing.

Under the old Act, the condition that the claim, whether in writing or otherwise, must be made within six months, was an absolute one. If not so made the right to compensation was lost. Now this is modified by the proviso (b) of sect. 2 (1) just given, and mistake, absence from the United Kingdom, or other reasonable cause, may furnish an excuse for its omission (*f*). Though this is so still, it will be prudent for a workman to leave nothing to chance, but in all cases make his claim as early as possible, and equally so in those cases where the employers continue to pay full wages after the accident. It is not necessary to proceed to arbitration in every case, but an applicant should not sleep on his rights, because apparently receiving all he is entitled to, but should put himself in a position to have them legally established at any future time (*g*).

This he will do by giving notice as above, and if his employer will not consent to a formal agreement being concluded, he may commence proceedings, when the course will be for the Court either to make a declaration of the employer's liability, postponing the assessment of the amount to a future day (*h*), or give compensation at the rate of a penny a week, with leave to apply when there should be a change of circumstances (*i*).

(*e*) *Lowe* v. *Myers*, 1906, W. N. p. 119.

(*f*) Probably following the similar case of want of notice. The sufficiency of such excuse will be a question of fact for the judge to decide at the trial. *Trail* v. *Kelman*, 1887, 15 R. 4.

(*g*) *Wright* v. *Bagnall*, (1900) 2 Q. B. 240; *Randall* v. *Hill's Dry Dock Co.*, 16 T. L. R. 368.

(*h*) *Chandler* v. *Smith*, (1899) 2 Q. B. 506.

(*i*) *Irons* v. *Davis*, (1899) 2 Q. B. 330.

But an applicant must not wait until he is recovered, and then apply for a nominal amount to preserve his rights in the case of supervening incapacity, as he must prove personal injury at the time of the inquiry (*k*).

In conclusion, it must be remembered that, to take advantage of want of either notice or of claim, the employer must give particulars as required by Rule 17 (1), otherwise he will be deemed to have waived the default, though leave to do so subsequently may be given on terms. Rule 17 (4).

(*k*) *Husband* v. *Campbell*, 5 F. 1146.

ARTICLE IX.

THAT FOR SUCH ACCIDENT THE RESPONDENTS ARE PERSONS LIABLE WITHIN THE ACT.

Liability of employers.

Under the present Act there is no ambiguity. In every case arising under it a workman has a right against his own employer, and for the purposes of this Act employers are by sect. 13 thus defined :—

13. In this Act, unless the context otherwise requires,—

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person.

Whilst having rights against his own employer under this Act, at the same time his rights at common law and under the Employers' Liability Act, 1880, are also preserved to him by sect. 1, subsect. (2) (b), as follows :—

When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or

take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

Whilst the obvious intention of this section, viz., that the employer shall not have to pay compensation twice, is clear, several difficulties remain unsolved.

The workman has an option either to make a claim or take proceedings. What is an exercise of such option? once made is it final? or, if having elected, can he at any time before judgment or its equivalent abandon his claim or proceedings and proceed by his alternative remedy?

However, these questions will be more appropriately dealt with in Article XI., dealing with matters of answer and defence, and so for the moment we will leave them.

A more practical and important question is, what remedy a workman should elect to enforce. This is dealt with in Part III., Chapter XI. dealing with alternative remedies.

Liability of third party.

So much for rights against his own employer. But cases frequently arise when, owing to his own immediate employer being financially weak, a workman would prefer to make some one else responsible if possible.

It may be a third party is liable, and by sect. 6, sub-sect. (1) he is entitled to proceed against him if he so elects:—

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any

person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation (*a*).

It will be observed this section is differently worded from that of the old Act. Under this Act a workman may take proceedings BOTH, &c., whilst under the similar clause the words were:—"The workman may, at his option, proceed either at law against that person to recover damages or against his employer for compensation under this Act, *but not against* BOTH." These changes are most material and of great benefit to the workman, as now he can, as regards third parties and his employer, commence concurrent proceedings without the risk of prejudicing either.

Liability of principals.

So a workman's employer may have been a contractor for some one else, in the Act termed "the principal"; and, again, the workman may be wiser to proceed against such principal, and his rights against such principal are now provided for by sect. 4, sub-sects. (1) and (4):—

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer,

(*a*) As to rights over, see Article XV.

except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, or in, or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management (*b*).

The effect of this section is to a certain extent clear. By sub-sect. (1) the liability of the principal is limited to those cases which arise in the course of *or* for the purpose of his trade or business, and to where the work has been undertaken by him.

And by sub-sect. (4) it is further limited to those cases where the accident occurred on or in or about premises where he had undertaken to execute the work, or which were otherwise under his control or management.

The wording and limitation of sect. 4 of the old Act is so different that it seems little benefit would be derived from paying much attention to it or to the decisions upon its meaning (*c*).

What [illegible]r is that, whilst a man is not to be liable as a principal [illegible] his private life, or for anything apart from his

(*b*) Sub-sect. 2) deals with rights over (*vide* Article XV.), and sub-sect. 3), to prevent mistakes, declares:—"(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal."

(*c*) The sub-section under the old Act was as follows:—"(4 This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of or process in, the trade or business carried on by such undertakers respectively."

trade or business he contracts with another to do work for him, yet in all matters connected with his business, happening on his premises or premises under his control, and being part of work undertaken by him, he is to be responsible.

The words "*work undertaken by the principal*" are not free from difficulty, though in simpler cases there may be little doubt. Thus a mill-owner who has a new flywheel put to his engine would not be responsible as a principal, although the work would obviously be for the purposes of his trade, on premises under his control, but it would not be part of work undertaken by him. (See *Wrigley* v. *Bagley* (*d*).) But a builder who employs an engineering firm to put an iron roof on a mill he was erecting would be liable. The roof would be put on for the purposes of his trade on premises under his control and as part of work undertaken by him. (See *Bush* v. *Hawes* (*e*).) Or consider another hypothetical case. A railway company's carter is delivering goods to a shopkeeper and is injured. Such delivery would be for the purpose of the shopkeeper's business on premises under his control, but would not be part of any work undertaken by him. Therefore he would not be liable. As regards this last instance, no doubt it might be well argued that a contract to deliver goods to be used in the man's business was part of any work undertaken by him. In fact, the phrase lends itself to several excellent constructions.

The words "any work" may be so emphasized as to be made to include everything done for, or in connection with, a man's business, or such stress laid on "by him" that the limitation of the old Act may be again introduced, and a man be freed from all liability for *work which is merely ancillary, or incidental to, and is no part of, or process in, the trade or business carried on* by him. A third construction is also plausible, limiting the clause to transactions with third parties, on the ground that the words "*work undertaken* BY *the principal*" are used in contradistinction to the words *work undertaken* FOR *the principal*.

What the ultimate reading will be it is impossible to forecast, as the interpretation must be coloured by the facts to which they are applied, but roughly (and exceptions are easily imagined) this last construction may possibly afford some guide in actual practice.

(*d*) (1901) 1 Q. B. 780. (*e*) (1902) 1 K. B. 216.

When a man contracts with an employer to do work that he himself has agreed to do for third parties he will be liable as a principal, but when he contracts with him to do work for himself he will not.

The meaning of *on, or in, or about*, formerly vital, as going to the whole right of compensation, is fully discussed in the old cases under the old Act.

Thus on, or in, or about a railway, will not include refreshment rooms (*d*), nor is a private siding about a railway (*e*), though a smithy used for shoeing horses used on it may be (*f*). A cart standing in a road being loaded from a factory may be within the term (*g*), but otherwise a cart delivering flour half a mile away (*h*). A driver of an engine on a private line of a coal mine, killed about three-quarters of a mile from it, has been held not to be working about such mine (*i*), whilst a man working on a road to a mine at no great distance from it has been included (*k*); as also a man who was digging a trench, though 500 yards away from the reservoir, which he claimed to be working on or about (*l*).

Next as to the proviso to sect. 4, sub-sect. (1), as to agriculture.

Under the old Act mechanical power was referred to in conjunction with steam or water—*steam, water, or other mechanical power*—and the Courts limited such mechanical power to power *ejusdem generis* with steam or water (*m*). But note here there is nothing to so limit its meaning or to prevent its wider or ordinary meaning being given to it.

Further, sub-sect. (3) of sect. 4 states:

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

(*d*) *Milner* v. *G. N. Rly.*, (1900) 1 Q. B. 795.

(*e*) *Brodie* v. *N. B. Rly.*, 1900, 38 S. L. R. 38.

(*f*) *Caledonian Rly.* v. *Breslin*, 2 F. 1158.

(*g*) *Powell* v. *Brown*, (1899) 1 Q. B. 157.

(*h*) *Lowth* v. *Ibbotson*, (1899) 1 Q. B. 1003.

(*i*) *Turnbull* v. *Lambton Collieries*, 16 T. L. R. 369.

(*k*) *Davies* v. *Rhymney Iron Co.*, 16 T. L. R. 329.

(*l*) *Ellison* v. *Lingden and Son*, 18 T. L. R. 48. See also *Back* v. *Dick*, (1906) A. C. p. 325, a similar case, and cases there cited.

(*m*) *Wilmot* v. *Paton*, (1902) 1 K. B. 237.

Whether a workman, having proceeded against either, will, before actually recovering, be bound by his election as against the other, or whether he can join both as respondents, has not been decided. The wording of sect. 4 (1), that in proceeding against a principal references to the principal shall be substituted for references to the employer, rather points to their being proceeded against separately, but perhaps is not conclusive. Under the old Act, in the Scotch case *Herd* v. *Summers* (*n*), it was decided they could not be joined. This, of course, will not prevent the respondent bringing in the employer as a third party, concerning which there is no doubt (*o*).

Liability of insurers.

Further, it may be that the employer may have insured himself against risk under this Act and become bankrupt. Then sect. 5 provides for such contingency, and transfers to the workman the benefit of such insurance, as follows:—

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then, in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so however that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

Whatever doubts there may have been under the old Act the wording of this is clear. A workman's rights are only substitutive,

(*n*) 7 F. 870. (*o*) For procedure, see Rules 19—23.

and not more extensive than those of the employer through whom he claims.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

Liability of bankrupt's estate.

The case of the employer becoming bankrupt, or being a company that is being wound up, is provided for by the following sub-sections:—

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those Acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the First Schedule to this Act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable

(*p*) *Morris* v. *Northern, &c. Indemnity Co.*, (1902) 2 K. B. 165.

to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by section nine of that Act, and that section shall have effect accordingly.

The provisions of the Bankruptcy Act, 1888, referred to are as follows:—

Bankruptcy Act, 1888.

1.—(1) Priority of Debts.]—*In the distribution of the property of a bankrupt, and in the distribution of the assets of any company being wound up under the Companies Act,* 1862, *and the Acts amending the same, there shall be paid in priority to all other debts—*

(a) [Parochial or local rates and taxes as provided.]

(b) *All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding-up, not exceeding fifty pounds; and*

(c) *All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order, or, as the case may be, the commencement of the winding-up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum or a part thereof as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding-up.*

(2) *The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the*

bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) *Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.*

(4) *In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order, or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.*

(5) *This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act*, 1883.

(6) *This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.*

Similar provisions are to be found in sect. 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, and in the Stannaries Act, 1887, relating to Cornwall and Devon, save that in the latter Act wages may be made a charge on all assets, and are to be paid in priority to all costs or other claims whatsoever.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the

bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

Does this sub-sect. (5) govern those cases where employers only partially insure and they themselves take part of the risk? Sub-sect. (2) would seem to contemplate such cases and to indicate that it does. Apart from this sub-sect. (5), there is nothing inconsistent in a workman proving for the balance as a preferential creditor under sub-sect. (3). If such preference is desirable, it seems hard a workman should lose it because his master is partially insured. As a preferential creditor he might secure his whole 100*l.*, whilst with his master insured he might only get a much smaller amount. Whether lawyers will read into this section words limiting it to those cases where the employer has been fully insured against any liability, and in other cases making it apply *pro tanto*, remains to be seen; but if they do not, it will not be the first time that provisions introduced for a man's benefit have proved the reverse.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

As to the rights of employers to make other employers liable instead of themselves in the case of industrial diseases, see Article XV. *infra*.

CHAPTER VI.

In addition to traversing the evidence of the applicant on any of the foregoing points, as a matter of defence, the respondents, provided they have given proper notice (*a*), **may also say:—**

ARTICLE X. (a).

THAT THE ACCIDENT WAS OCCASIONED BY THE SERIOUS AND WILFUL MISCONDUCT OF THE WORKMAN, AND THAT IT HAS NOT RESULTED IN DEATH OR SERIOUS AND PERMANENT DISABLEMENT.

We have seen the burden of proof is on the workman to prove he was injured by an accident (Article IV.) arising out of, or in the course of, his employment (Article V.). To this the respondents are entitled to reply the accident was occasioned by the serious and wilful misconduct of the workman.

By sect. 1 (2) (c) it is enacted:—

> (c) If it is proved(*b*) that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

Whether this is so or not will be a question of fact for the arbitrator to decide, and, as in so many of · ases, the Court of Appeal will not willingly interfere with such finding. As to the

(*a*) W. C. R., 1898, 17. As to judges' discretion in case of want or defect, see *Silvester* v. *Cude*, 15 T. L. R. 134.

(*b*) The burden of proof is on the respondents: *McNicholas* v. *Dawson*, (1899) 1 Q. B. 773.

exception, it will be noted the words are serious *and* permanent; that is, for the exception to prevail the disablement must be both permanent and serious. But note there is nothing in the exception limiting it to total disablement. If, therefore, a man lost a thumb, it might well be held he was both seriously and permanently disabled. The objection to this construction is that it practically reduces this provision to a nullity.

It will be remembered that playing the fool, doing things expressly forbidden, &c., disentitle a workman, as they are not acts arising out of, or in the course of, his employment (*e*), and questions of serious and wilful misconduct only arise when in the course of his employment the workman does something he ought not to do.

This is well illustrated by the County Court case of *Jones* v. *L. & S. W. R.* (*d*). Here a fireman was expressly forbidden to leave the footplate of his engine whilst in motion. He did so and was killed. He was obviously acting within the scope of his employment, but the Judge seems to have rightly held he was guilty of serious and wilful misconduct.

It is not enough for the employer to prove negligence, however gross; he has to go further and prove wilful misconduct. In law, wilful means action the result of one's will, as distinct from action the result of duress, compulsion, or even inattention, or sudden impulse (*e*).

In wilful, then, is the implied idea of deliberation, consideration, what course one would take, and taking it right or wrong. In cases of negligence, the very reverse is usually the case—not taking the thought one should do. The decided cases seem to pretty generally recognize this distinction.

Thus a miner deliberately walking along a main haulage road on which a train of coal trams was in motion, instead of taking refuge in a manhole, was killed, and was held to have been guilty of serious and wilful misconduct (*f*). But where a carpenter, ordered not to touch machines, was sharpening his tools on a grindstone driven by belting, and the belt slipping, he tried to put

(*c*) Article V.

(*d* L. T., June 29, 1901.

(*e*) *Reeks* v. *Kynoch*, 50 W.R. 113.

(*f*) *John* v. *Albion Coal Co.*, 1901, 18 T. L. R. 27.

it back and was injured. It was held he was not guilty of serious and wilful misconduct. His act might well be due to impulse, and obviously the accident arose out of, and in the course of, his employment (*g*).

Effect must be given to the word misconduct.

In *Kendall* v. *Nunnery Colliery Company*, certain rules were made for the protection of miners. By one of these they were directed to put in supports for the roof of the part they were working in. On a certain occasion when the roof fell the way and they could not get the tr[illegible] through the top down, with the result that part of the roof fell and [illegible] was injured. The Court held he had not been guilty of serious and wilful misconduct (*h*).

Douglas v. *Hunt, Moore & Co.* *The Times*, 21st March, 1906, a case very near the line between a collier who went out at by a shaft instead of a [illegible] the proper way and the former was in the act of dangerously [illegible] leaving the collier was killed.

It is not clear from the [illegible] whether its use was forbidden, but the Court of Appeal judge [illegible] it was the custom to use it, and he [illegible] found and the appeal was confirmed, that its use was not [illegible] misconduct.

The respondents mainly relied to show that so leaving did not arise out of and in the course of employment, an impossible contention, whilst had the [illegible] themselves to showing it was forbidden, they ought to have more chance of success (*i*).

Express and deliberate disobedience to orders will usually [illegible] misconduct. Thus it has been so held in the case of a miner who, contrary to orders, wore a naked light [illegible] using cartridges (*j*); of a miner unram-

(*g*) [illegible] 2 [illegible] down the shaft and drew back it. Held: serious and wilful misconduct.

(*h*) B. [illegible] contributory negligence. *Colliery* [illegible] misconduct.

(*i*) *McGhie*, [illegible] held 80 L. T. 42.

(*j*) See similar Scotch case, considered. [illegible] though absolute carelessness [illegible] possibly, a collier *Teague* v. *Fullerton*, 3 F. 1006.

pushed his hatch from behind [illegible] (*j*) *Dailly* v. *Watson*, 1900, without [illegible] leaving the cage was 2 F. 1011.

of there to receive it, so that it

using a hole charged with explosives contrary to orders (*k*); a girl who was injured when cleaning machinery in motion, there being an express rule in the factory forbidding it to be so cleaned (*l*); of a workman who deliberately did not replace a guard to a circular saw (*ll*); and of a girl engaged on a platform of a steam thrashing machine who was specially directed to remain where she was and did not do so, but moved and was injured (*m*).

But the serious and wilful misconduct must be the cause of the accident, otherwise it is not an answer. Thus, where a miner, contrary to rules, rode on the top of a loaded hutch and was killed by a stone falling on him, his widow still recovered, as the disobedience was not the cause of his death (*n*).

(*k*) *Watson* v. *Butterly Co.*, 1902, 111 L. T. J. 178.

(*l*) *Guthrie* v. *Bouse Spinning Co.*, 1901, 8 S. L. R. 433.

(*ll*) *Brooker* v. *Warren*, The Times, Dec. 20, 1906, C. A.

(*m*) *Callaghan* v. *Morwell*, 2 F. 420, Ct. of Sess.

(*n*) *Glasgow Coal Co.* v. *Sneddon*, 7 F. 485.

ARTICLE X. (b).

AS REGARDS INDUSTRIAL DISEASES, THAT THE WORKMAN HAS AT THE TIME OF ENTERING THE EMPLOYMENT WILFULLY AND FALSELY REPRESENTED HIMSELF IN WRITING AS NOT HAVING PREVIOUSLY SUFFERED FROM DISEASE.

This is provided for by sect. 8, sub-sect. (1) (b), as follows :—

> (b) If it is proved that the workman has at the time of entering the employment wilfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

It will be observed that for employers and insurers to secure the benefit of this clause the workman must have made the representation *in writing*. It will be desirable as a matter of routine to have such declaration signed in every case by every workman on his being taken on.

In addition to the above, workmen in such industries are as equally liable for wilful and serious misconduct as those in other trades or businesses. Masters will do well to see that rules for their protection are well brought to their notice, and they ought to give emphatic directions as to their being observed. Of course it will be noted that the qualification that such misconduct is not to be a defence in those cases where death or serious and permanent disablement result equally applies.

ARTICLE XI.

THAT THE APPLICANT HAS SOUGHT OTHER REMEDIES, WHICH HAS DISENTITLED HIM TO RECOVER UNDER THE ACT.

The Act contemplates rights against employers, principals (substituted for employers) and third parties.

As regards rights against **employers**, these are provided for by sect. 1, sub-sect. (2) (b), as follows:—

> (b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Act or take proceedings independently of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid.

And first the defence:—proceedings already taken under the Act.

Making a claim is a definite exercise of such option (*a*), but can be abandoned during the proceedings (*b*), and if at the hearing it is decided there is no case within the Act, then the Act does not apply at all, either to give the workman compensation or affect his

(*a*) *Powell* v. *Main Colliery Co.*, (1900) A. C. 366.

(*b*) *Rouse* v. *Dixon*, (1901) 2 K. B. 628.

other rights (*c*). It may be otherwise if the point ever comes for decision, and a claim within the Act, dismissed on its merits, *e.g.*, for disobedience, may be held to be a binding election.

A workman also exercises his option when, in fact, he accepts compensation under the Act, unless there are attendant circumstances showing he did not intend it to be so regarded (*d*), and so it may be very strong evidence, perhaps conclusive evidence, that he has made his election when he has accepted and joined in a certified scheme in lieu of the provisions of the Act (*e*). Having regard to the comprehensiveness of the present definition "any employment," it is difficult to imagine any case where a workman could have other rights and yet no rights under the Act. Should such a case arise, it might again be well argued that if the Act or substituted scheme did not apply to him to give him compensation, neither did it apply to him to restrict his other remedies. As regards infants, the old common law rule still applies; any election or option made on his behalf is only binding on him if for his benefit (*f*).

Principals substituted for employers.

Sect. 4 (1) provides for those cases where the employer contracts with a person (in the section named the principal) to do work for such principal, such work being the whole or any part of the work undertaken by the principal. The rights of the workman to proceed against such principal are dealt with in Article IX., and the rights of such principal to be indemnified by the immediate employer in Article XV., but it is material to this part of the subject to note that when a principal is proceeded against under this section he is to be considered for the purposes of such proceedings the same as if he was the actual employer.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of

(*c*) *M'Donald* v. *Dunlop*, 7 F. 533; *Beckley* v. *Scott*, 1902, 2 I. R. 504.

(*d*) *Oliver* v. *Nautilus* [illegible], (1903) 2 K. B. 639, decided [illegible] sect. 6, but the principle [illegible]ay applies here. Now agreements entered into through mistake, fraud, &c., are now specifically dealt with by para. 9, sub-sect. (d), of Schedule II.

(*e*) *Taylor* v. *Homestead Colliery Co.*, (1904) 1 K. B. 838.

(*f*) *Stephens* v. *Dudbridge Ironworks Co.*, 1903, 19 T. L. R. 665; *Ford* v. *Wren and Dunham*, 1903, 115 L. T. J. 357.

his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; *and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:*

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

Next the defence;—proceedings already taken other than under the Act.

It has been held that a workman has exercised his option when he has commenced an action in the usual way (*g*). Probably, though not expressly decided, he may equally abandon his election during the course of the proceedings (*h*); but if at the hearing the case is decided against him, he cannot then bring arbitration proceedings under the Act, but must at once ask for compensation to be assessed, as expressly provided by sect. 1, sub-sect. (4), of the Act:—

(4) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover

(*g*) *Edwards* v. *Godfrey*, (1899) 2 Q. B. 333.

(*h*) By analogy with case of *Rouse* v. *Dixon*, (1904) 2 K. B. 628, *supra*

damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

This section has been strictly construed. Application under it must be made at the hearing or the right will be lost, as fresh proceedings for compensation cannot be commenced (*i*). A plaintiff, however, who applies to the Judge to assess compensation under this section is not debarred, under plea of having made his election, from obtaining an order for a new trial. Thus, in *Isaacson* v. *New Grand, &c.* (*k*), the plaintiff was nonsuited and the Judge refused to assess compensation. The plaintiff appealed against the refusal to assess compensation to the Court of Appeal and against the nonsuit to the Divisional Court. Here a new trial was ordered, and the plaintiff, instead of discontinuing in the Court of Appeal, correctly obtained an order for the appeal to stand over until after the hearing of the new trial. But the practice is extremely intricate, not to say tricky, and this decision of *Isaacson* v. *New Grand, &c.*, must be read in the light of the recent case of *Neale* v. *Electric, &c. Co., Ltd.* (*l*). Here the plaintiff having failed in his common law action, application was

(*i*) *Edwards* v. *Godfrey*, (1899) 2 Q. B. 333.

(*k*) (1903) 1 K. B. 539.

(*l*) (1906) 2 K. B. 558.

made at the close of the trial for assessment under the Act, but, unfortunately for the plaintiff, the application was allowed to ripen into an award of compensation, and on an appeal for a new trial in the original action the Court held that the award made was equivalent to a judgment, and that by accepting the award the plaintiff had made a final and irrevocable election as to the remedy he would adopt, and was therefore estopped from proceeding further in the original action. Therefore a plaintiff whose action is dismissed is in a very difficult position. If he does not wish to lose his right to compensation he must at the close of the action ask the Court to proceed to assess such compensation (*m*), and if he does not wish to lose his right to appeal in such action, he must be very careful that the proceedings in such assessment do not go so far as the certificate which is to have the force of an award. There seems no reason why the Court should not deal with the whole question, including costs, and then allow the certificate itself to stand over until the rights in the action itself have been finally determined.

As regards rights against **third parties**, these are provided for by sect. 6 :—

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation (*n*).

(*m*) *Edwards* v. *Godfrey*, *supra*.

(*n*) There is material difference between this clause and the clause under the old Act, which was as follows :—6. *Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.*

By the new Act it will be noticed that, instead of having to make his option, a workman, as regards third parties, can concurrently enforce his remedies under the Act and at common law or under the Act and the Employers' Liability Act, 1880. If, however, the workman actually accept compensation under the Act, he will still be bound as against third parties. This was held to be so in *Murray* v. *N. B. Rly.* (*o*), even though in settling under the Act he had expressly reserved his rights against third parties. But that such an arrangement is possible is shown by *Oliver* v. *Nautilus S.S. Co.* (C. A.) (*p*). Here the plaintiff had signed second and subsequent receipts "without prejudice," and it was held that he did not intend to unconditionally accept the first any more than the other payments, and so the Court of Appeal held he had not made his election within the meaning of the section. Still, it is not a very safe guide to follow, and if parties wish to enforce rights against third parties, they had better not accept compensation from their employers with or without prejudice; it is too dangerously near the line. When workmen have to accept weekly payments and employers are willing to make them, they had better accept them and give receipts for them as loans to be repaid out of any damages received from the third parties. A hard case in this respect was that of *Tong* v. *G. N. Ry.* (*q*). Here a workman, compensated by his own employers, could not recover from the third parties, by whose negligence he had been injured, the balance of his damages consisting of half wages, compensation for pain and suffering, and the expense of his cure. In *Elliot* v. *Liggings* (*r*) the applicant properly so lost his rights. He took half his wages by agreement under the Act, and on leaving sought to recover the balance of his wages as damages, but without success.

In contradistinction to the foregoing it must be noted that sect. 1, sub-sect. (5), of the Act expressly states—

(5) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

(*o*) 6 F. 510. As also in *Mulligan* v. *Dick*, 6 F. 126.

(*p*) 1903, 2 K. B. 639.

(*q*) 18 T. L. R. 566.

(*r*) (1902) 2 K. B. 84, Div. Ct.

The result of this sub-section is that so far as such fines are concerned the liability of an employer will be cumulative (*s*). This certainly seems to have been the intention of the Legislature. The similar clause under the old Act was as follows:—

(5) *Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.*

From a comparison of the two sub-sections it will be seen the last part of that of the old Act, which states that the amount so applied shall be taken into account in estimating the compensation, has been omitted. By sect. 136 of the Factory and Workshop Act, 1901, it is enacted that "*the whole or any part of the fine may be applied for the benefit of the injured person or his family, or otherwise as the Secretary of State determines.*" And by sect. 70 of the Coal Mines Regulation Act, 1887, there is a similar provision for the application of fines, as also in sect. 38 of the Metalliferous Mines Regulation Act, 1872. It will be noticed it is not incumbent on the Secretary of State to so apply the fine, but if he does, it will not be an answer to further proceedings under this Act.

(*s*) As to the ordinary rules of seeking two remedies or proceedings against different wrongdoers, see *ante*, p. 59.

ARTICLE XII.

THAT THEY HAVE ADMITTED THE CLAIM AND THERE IS NO SUBJECT-MATTER FOR ARBITRATION.

By sect. 1 (3) it is enacted:—

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

A condition precedent to proceeding to arbitration is that a question must arise and not have been settled by agreement (*a*). This is now definitely settled by the new Rule 8 (1), which states: *An application for the settlement of any matter by arbitration shall not be made unless and until some question has arisen between the parties, and such question has not been settled by agreement.* This gives effect to the decision in *Field* v. *Longden* (*b*), under the old Act, where the respondents admitted liability, amount to be paid weekly, and the time during which it had to be paid, namely, during incapacity. On these facts the Court held there was no subject-matter on which to go to arbitration, and that if the workman wished a formal record to be filed he could have sent, under para. 9 of the Second Schedule to the Act, a memorandum of what had taken place to the Registrar of the County Court, who would have filed it without expense, when it would have become operative and enforceable as a County Court judgment.

(*a*) A real question must be involved. *Jones* v. *Great Central Rly.*, 18 T. L. R. 66.

(*b*) (1902) 1 K. B. 47.

This memorandum would be subject to review by the County Court Judge, and would be in all respects the same as a memorandum given on the record of a formal agreement or of arbitration proceedings. Nor is there any limit of time for registering it, and its genuineness will not be affected by its being no longer applicable owing to altered circumstances (*c*); but by para. 9 (b), Schedule II., the County Court Judge has now a discretion as to the terms on which such memorandum shall be recorded. If, notwithstanding this admission, the applicant proceeds to arbitration, the respondents must give notice of their objection to the arbitrator proceeding, on the ground that there is no matter in dispute between the parties; or, if they prefer it, the respondents themselves may draw such memorandum of an agreement, and if the applicant refuse to sign it they will be still entitled to have it recorded by the Registrar of the County Court (*d*).

This is now provided for by para. 9 of Schedule II., and by para. 10 employers, to make themselves safe, must so register the memorandum. In addition, even if such memorandum be duly registered, it will be no protection if the County Court Judge is not satisfied the agreement recorded by it was adequate or fairly obtained.

The paragraphs are as follows:—

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

(*c*) *Blake* v. *Midland Rly.*, (1904) 1 K. B. 503.

(*d*) *Jones* v. *Great Central Rly.*, 18 T. L. R. 66.

Provided that—

(a) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(c) the judge of the county court may at any time rectify the register; and

(d) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make

such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(c) the judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

ARTICLE XIII.

THAT THE APPLICANT HAS CONTRACTED OUT OF THE ACT.

The Act cannot be contracted out of except on the conditions set out in sect. 3, providing for a substituted scheme.

The present requirements are more stringent than in the old Act, and are as follows :—

3.—(1) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favourable to the workmen and their dependants than the corresponding scales contained in this Act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this Act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

By para. (16) of Schedule II. full powers may be given to those who have the carrying out of such substituted scheme.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement substituted to and approved by the committee, all or any of the powers conferred by this Act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisoes (d) and (e) of paragraph (9) of this Schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

And when a scheme has been certified and substituted for the provisions of the Act, claims made under it will have the same legal effect as under the Act. Therefore, if an applicant elect to take under the scheme, it will have the same legal effect as if he elected to receive compensation under the Act, and he will be barred from other remedies (*a*).

But it must be noted that a scheme only ousts the Act or other remedies of the parties exactly so far as its provisions specifically extend. Thus, in the case of *Haworth* v. *Andrew Knowles & Sons, Ltd., Accident Society* (*b*), it was held the applicant had a right to have the question of fact settled by the County Court Judge, Was he, or was he not, able to resume his work? By a clause of the scheme, if the committee entrusted with carrying it out found he

(*a*) *Taylor* v. *Hamstead Colliery Co.*, 20 T. L. R. 338.
(*b*) 19 T. L. R. 658.

was able and would not resume work, he was to forfeit further compensation. But there was no provision that the finding of the committee was to be final or conclusive, and hence, as the workman's right to compensation depended on the question, Could he, or could he not, resume work? he was entitled to have that question tried in the ordinary manner.

3.—(2) The Registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

If in the renewed scheme there are changes from the old, it is not sufficient to bind a workman that he merely did not object to the new scheme; it must be proved he actively consented to it (*c*).

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

By the Shop Club Act, 1902 (2 Ed. VII. c. 21), employers may not make it a condition of employment that workmen shall give up existing membership of friendly societies.

(4) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in sub-section (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Registrar shall examine into the complaint, and, if satisfied that good cause

(*c*) *Wilson* v. *Ocean Coal Co.*, *Treherne* v. *Ocean Coal Co.*, 21 T. L. R. 621.

exist for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the Registrar under this Act.

(8) The Chief Registrar of Friendly Societies may make regulations for the purpose of carrying this section into effect.

The following provisions have been made dealing with existing contracts and schemes :—

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that Act) existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this Act shall, if re-certified by the Registrar of Friendly Societies, have effect as if it were a scheme under this Act.

(3) The Registrar shall re-certify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this Act as to schemes.

(4) If any such scheme has not been so re-certified before the expiration of six months from the commencement of this Act, the certificate thereof shall be revoked.

For the purpose of these respective sections facilities have been given to friendly societies by Schedule I. (21) as follows :—

(21) *Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act*, 1896, *shall not apply to such society in respect of such scheme.*

The proviso to the first sub-section of sect. 8 is as to the registry of friendly societies, and states :—" Provided that a friendly society which contracts with any person for an annuity exceeding fifty pounds per annum or of a gross sum exceeding two hundred pounds shall not be registered under this Act." Sect. 16 is as to tables of annuities, contributions, &c. being certified by some actuary approved by the Treasury, and sect. 41 imposes a limit of benefits.

Again, by sect. 8, sub-sects. (7), (8), and (9), compulsory insurance is to be established in certain industries. Whether the benefits of such insurance are to be substituted for those of the Act is not stated. Possibly it was intended that they should be, but effect has not been given to such intention. The following are the sub-sections in question :—

(7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insur-

ance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the Secretary of State may, by Provisional Order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the Order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the Secretary of State may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

For sub-sects. (8) and (9), as to Provisional Orders being confirmed by Parliament, see Act *in extenso*.

And finally sect. 9 provides for schemes made by the Treasury for those in the naval and military service of the Crown.

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such

warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act.

It will be observed that the sect. 3 (1) requires that workmen contributing to a scheme shall receive the cumulative benefits of the scheme as well as of the Act. This will do much to lessen the popularity of such schemes, at any rate with masters.

Can masters, without offending against the Truck Acts (*d*), receive a weekly payment from their men towards what they pay for insurance? This was successfully done in the case of *Owner* v. *Hooper* (*e*). Here the employer paid his men their wages in full, giving to each at the same time a note of how much he had to pay towards the insurance fund. More, this amount was such that the employer made a considerable profit out of it. The sum named the workman then paid to his cashier. Personally, it seems difficult to reconcile this case with other decisions on these Acts, but probably it can be safely followed, and for the reason there given, that really such transaction was not within the intent or mischief of the Acts.

(*d*) See Stone's Justices' Manual under this heading.
(*e*) 89 L. T. 130.

ARTICLE XIV.

THAT THE APPLICANT HAS REFUSED TO SUBMIT HIMSELF TO MEDICAL EXAMINATION.

When a workman has given notice of an accident, he is required by para. 4 of the First Schedule to submit himself to medical examination, and the inquiry is to be suspended until he does.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Act in relation to compensation, shall be suspended until such examination has taken place.

Because notice of the accident has been waived, it does not follow the workman need not comply with this paragraph, and, until he does so comply, this paragraph is absolute as to the suspension of his rights in the meantime (*a*). Nor may the County Court Judge make it a condition of his so submitting himself to examination that his employer shall pay for his own doctor being also present (*a*).

When a workman is in receipt of compensation, whether under an award or otherwise, then the following regulations (paras. 14 and 15 of the First Schedule) have been made as to his submitting himself to medical examination.

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from

(*a*) *Osborn* v. *Vickars*, &c., (1900) 2 K. B. 91.

time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payment shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound as may be prescribed, refer the matter to a medical referee.

It must be noted the registrar can only refer the matter to a medical referee on the application of *both* parties, otherwise the ordinary practice will prevail. In the Bill before the Commons provision was made for such reference on the application of either party. Probably now, as both must consent, this paragraph will prove a dead letter, and the practice will very much follow that under the old Act, where it had been held that, though it was compulsory for him to submit himself to the employer's doctor, it

was not compulsory for him to submit himself to a medical referee (*b*).

(15) (*contd.*) The medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this Act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

A workman objecting to be so examined has a better course open to him—not to join in the application for a medical referee. He will be then entitled to have the matter tried by the arbitrator in the usual way. If the arbitrator desires an expert opinion he can, by para. (15) Schedule II, submit the case to a medical referee for a report, and he will deal with such report when made as seems best to him

(*b*) *Neagle* v. *Nixon, Edwards* v. *Guest and Others*, (1904) 1 K. B. 339

(15) (*contd.*) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

By para. (15), Schedule I., it is further enacted:—

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and subject to the consent of the Treasury, as to the fee to be paid under this paragraph.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

There have been some decisions on the practice under the old Act, but the changes are so considerable that they are of little or no value.

CHAPTER VII.

Further, the respondents may say, though not as against the applicant:—

ARTICLE XV.

THOUGH LIABLE TO THE APPLICANT THEY ARE ENTITLED TO BE INDEMNIFIED BY SOME OTHER PERSON.

Rights of indemnity over as provided for by sect. 6 as follows:—

Employer's and principal's right to be indemnified by third parties.

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this Act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this Act relating to sub-contracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of

any such indemnity shall, in default of agreement, be settled by action(*a*), or, by consent of the parties, by arbitration under this Act.

The effect of the above section is that principals under sect. 4 of the Act, who have to stand in the shoes of the immediate employers and compensate the workman, as well as any who may have to indemnify such principals together with employers who are ultimately liable to principals and their indemnifiers, are by virtue of above, sub-sect. (2), all entitled to be indemnified by the third party liable. Then follows the express enactment settling a debated point, that in default of agreement such liability of the third party shall be settled by action unless the parties consent to arbitration under the Act(*a*).

An important question is, Can a person liable to pay compensation agree his liability without resorting to arbitration without prejudicing his rights to such indemnity? Under the not very dissimilar words of the old Act he could (*b*), and under the present Act (*c*), especially as emphasised by the rules (*d*) and forms (*e*), some question in dispute—and, we may take it, some question between the applicant and other parties, and not merely between other parties amongst themselves—is made a condition precedent to proceeding at all. But, taking it he can so agree, it is not desirable to do so. There is the technical objection that it is just possible the word "recover" (*f*) might be held to mean "recover by action," and there is the very practical objection that if he does and then sues the third party, such third party will have open to him every defence which would have been open to him against the applicant in arbitration proceedings, and he will have to prove the applicant's case, possibly without the applicant's assistance, as well as his own right to an indemnity.

(*a*) The provision is so express that reference to the law under the earlier Act is unnecessary. In *Thompson* v. *N. E. & c. Co.*, (1903) 1 K. B. 428, the old law and practice is fully dealt with in an excellent judgment by Mr. Justice Kennedy, confirmed in *Evans* v. *Cook*, (1905) 1 K. B. 53.

(*b*) *Evans* v. *Cook*, (1905) 1 K. B. 53.

(*c*) *Field* v. *Longden*, (1901) 1 K. B. 47.

(*d*) Rule 8.

(*e*) Forms 1—10.

(*f*) *Haines* v. *Welch*, L. R. 4 C. P. 91.

If he wishes to bind the third party he should not admit liability but let the matter go to arbitration and give him notice of the proceedings. If he does this, then by rule 24 any order made against him in favour of the applicant will bind such third party as well. So his right to an indemnity carries with it a right to all costs properly incurred (*g*); but to avoid disputes as to these he should as far as possible act in concurrence with such third party in all the steps he takes.

Principal's right to be indemnified by employer.

In addition to their right to be indemnified by third parties, principals are also entitled to be indemnified by the actual employer, and by any person who would have been liable to pay compensation under the Act.

The section regulating the liability of principals and their right to indemnity is as follows:—

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this Act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this Act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, ploughing, or other agricultural work, and the con-

(*g*) *G. N. R.* v. *Whitehead*, 18 T. L. R. 816.

tractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this Act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section (*h*), and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this Act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

Here, again, the difficult questions in the corresponding section of the old Act are wanting, and once again it is definitely stated that the right to, and the amount of, the indemnity is to be settled by arbitration under the Act. The procedure is governed by rules 19 to 23, and these the practitioner should carefully read *in extenso*. By these a respondent must give notice to the employer as third party at least ten clear days before the hearing that he claims an indemnity. If he does so the employer will be bound, and the case can be proceeded with, whether he attends or does not.

A greater difficulty is, will a respondent entitled to an indemnity lose such indemnity if he fails to give such notice in time? Such was the harsh construction put on the previous Act and rules (*i*). Will it be equally applied to these? That a respondent should be made responsible for all expenses occasioned by his laches, and that he should be mulcted in costs and put to the strictest proof of his claim is just, but it is not just that he

(*h*) Is anyone other than the actual employer intended to be referred to?

(*i*) *Appleby* v. *Horseley Co.*, (1899) 2 Q. B. 526. With this must be read *Evans* v. *Cook*, (1905) 1 K. B. 53, where it was held the rules had nothing to do with the case, as no arbitration had been held.

should lose his right to indemnity *in toto*. Is not the procedure under sect. 6 the more correct? If a respondent gives a third party notice, he secures his being bound. If he fails to do so, then when the case again comes on for trial he will have to prove the whole from the beginning, and if at his own expense this, surely, should be sufficient penalty for not having given his notice in time. Apart from the decision in the old Act, a decision which may well be ignored, there is nothing absolutely imperative that such a reading should be given to the present Act and rules.

Again, as regards *industrial diseases*, the compensation is recoverable from the employer who last employed the workman, and he in the first instance is properly made the respondent by the workman; but by sect. 8, sub-sect. (1) (c), he has rights over as follows:—

> (c) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due:
>
> Provided that—
>
> (i) the workman or his dependants if so required shall furnish that employer with such information as to the names and addresses of all the other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and
>
> (ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and

not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this Act for settling the amount of the compensation;

(d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.

On examining the sub-clause (ii) it will be noticed that the employer first sued does not merely secure an indemnity from the employer liable, but such employer is substituted for him, and he is relieved from all responsibility. In fact, this section theoretically operates less as an indemnity than as a defence by way of traverse of the claim, which should allege and prove he is a person liable within the Act. However, the Act apparently requires him, in the first instance, to be made a respondent, and so for practical purposes this clause is better considered here than as a matter of defence open to him.

PART II.

CHAPTER VIII.

The Assessment of the Compensation.

The applicant having established his right to compensation, our next consideration must be the assessment of the amount.

This is provided for by paras. (1), (2), and (3) of the First Schedule.

(1) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i) If the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earn-

2:

ings during the period of his actual employment under the said employer (*a*);

(ii) If the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants (*b*); and

(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds (*c*);

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound:

Provided that—

(a) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week (*d*); and

(*a*) The words "and any lump sum paid in redemption thereof" are new. In other respects this sub-section is the same as under the old Act.

(*b*) This sub-section is practically the same as under the old Act.

(*c*) This sub-section is the same as that of the old Act.

(*d*) The corresponding section of the old Act is as follows. It will be seen there is an alteration as to compensation for slight injuries, and the words *after the second week* are omitted, but in other respects it is the same:—"(b) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity *after the*

(b) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent. shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings (*e*).

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed :—

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the

second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, each weekly payment not to exceed one pound."

(*e*) This sub-section is entirely new.

same class of employment and in the same district;

(b) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(d) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the [illegible] (*f*).

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear

(*f*) These provisions for arriving at the average weekly earnings are new.

such relation to the amount of that difference as under the circumstances of the case may appear proper (*g*).

On reading these clauses through it will be seen that, as under the old Act, so under this, the basis of compensation is to be the average weekly earnings of the workman injured, and the determination of this weekly average will therefore be the first step in the assessment of compensation. As regards such assessment, the great difference in practice will be this: formerly the rules for determining such average were to be found in judicial decisions, now they are provided for by para. (2) of Schedule I., as just set out. Probably the master principle in computing such average will be that enunciated in the opening words of the sub-sect. (a) of para. (2): "*Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated.*" This enactment will give an arbitrator an almost unfettered discretion as to his methods of arriving at such average, and, provided he is careful to exercise his discretion in every case, which it is imperative on him to do (*h*), there is little probability of his decisions being interfered with. But, as before, the determination of this weekly average will be a question of fact, and, although so much is left to the discretion of the arbitrator, will still be subject to the following directions in law:—

I. The meaning to be attributed to "average weekly earnings."

II. The meaning to be attributed to "earnings."

III. Subject to certain modifications, only earnings in an employment by the same employer are to be reckoned.

IV. The meaning to be attributed to "employment by the same employer."

(*g*) There is a considerable difference between this and the old sub-sect. (2), for which it is substituted, which was as follows:—"(2) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity."

(*h*) *Rigby* v. *Cox* (No. 2), (1904) 2 K. B. 208; *Webster* v. *Sharp*, (1904) 1 K. B. 218.

V. Modification of rule, only employment by the same employer to be reckoned—

(a) Where not practicable to arrive at "average" by ordinary methods;

(b) Where there are concurrent contracts of service.

VI. Provided the grade of labour has remained unchanged, it is not material that the work engaged upon has varied, nor that the earnings have varied.

VII. In arriving at the difference between the average weekly earnings of a workman before the accident and his earnings after it has occurred, only actual earnings may be considered, and not what he might have earned but for the accident.

VIII. If the full time required by the Act has elapsed, the average must be computed from such time.

IX. But no definite length of time is required, and an average must be computed from time, however short.

DIRECTION IN LAW I.

The meaning to be attributed to "average weekly earnings."

It will be noted that the compensation is not based on the current wage paid, but on average weekly earnings. These words have been the subject of nearly as much learning as the word accident. In *Lyson* v. *Knowles* (*i*), the meaning of the phrase was fully discussed in the House of Lords, and finally decided. The result of the judgments is, the popular meaning is to govern, and that practically it might be paraphrased to read what a man week in week out might on an average earn (*j*). Thus in popular parlance, talking of a man who earned irregular wages, one would say, speaking of a yearly servant, that on an average he got so much a week or so much a month, as he case might be. Then to arrive at such average weekly earnings, all in a given period

(*i*) (1901) A. C. 79.

(*j*) *Ayres* v. *Buckeridge*, &c., (1902) 1 K. B., at p. 66. "What would have been his earnings, taking one week with another, had he had an opportunity of earning wages during two weeks or more?"—Collins, M.R.

should be added together, and the total divided by the number of weeks in such period. So this view is practically embodied in the words of the para. (2) (a) just quoted, viz., average weekly earnings shall be computed in such manner as is best calculated to give the *rate per week* at which the workman was being remunerated.

Surely the logical application of this rule should for the future render impossible those ridiculous cases under the old Act where two men, practically in identical employments under identical conditions, were held to earn on an average quite different amounts. Even worse was the absurd case of *Walters* v. *Clover* (*k*), where, according to the highly technical view taken of whether a man who worked from Wednesday to Tuesday worked in one week or two, his average earnings were to be fixed at 1*l.* 6*s.* 3*d.* or 2*l.* 12*s.* 6*d.* respectively. One or other of these amounts could not help but be wrong—as a matter of fact, both were. The man never earned so much as 2*l.* 12*s.* 6*d.* a week, and rarely so little as 1*l.* 6*s.* 3*d.*

DIRECTION IN LAW II.

The meaning to be attributed to "earnings."

By earnings gross wages, including overtime (*l*), as a rule, will be understood; so probably irregular extras for the same class of services during the same period should be added (*m*). No deduction should be made for small payments a workman may have to make, such as oil for a miner's lamp (*n*), and so, on the other hand, no addition can be made for incidental advantages received, such as tuition by an apprentice, which is often the substantial consideration paid him for his services (*o*). If, however, the advantage be one readily reducible to a money value, as a house rent free, it may be included (*p*). Whether this decision will carry the equivalent or monetary value of the board and lodging received

(*k*) 18 T. L. R. 60.

(*l*) *Giles* v. *Belfort*, (1903) 1 K. B. 843.

(*m*) In *Hathaway* v. *Argus Printing Co.*, (1901) 1 Q. B. 96, it was decided otherwise, on the ground such services were not continuous for two weeks, but *cessat ratio cessat lex.*

(*n*) *Houghton* v. *Sutton Heath Colliery Co.*, (1901) 1 K. B. 93, approved in *Abram Coal Co.* v. *Southern*, (1903) A. C. 306.

(*o*) *Pomphrey* v. *Southwark Press*, (1901) 1 K. B. 86.

(*p*) *G. N. Rly.* v. *Dawson*, (1905) 1 K. B. 331.

by domestic and other servants remains to be settled, and one supposes, in the usual manner, by the House of Lords. But certainly it seems to go a considerable distance in this direction. The quantum or value of such board and lodging will be a question of fact in each case.

Guards' uniforms supplied and allowances made when away (*q*) by railway companies have been reckoned as part of their earnings, but the latter decisions, at any rate, must be read in the light of the over-ruling section of the First Schedule, as follows:—

> (d) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

As regards commercial travellers who receive a money allowance to cover hotel, rail and other expenses, nice questions will arise whether all such allowance comes within this sub-section, or whether they can claim for the part representing board and lodging. If they can, perhaps such additions may so swell their earnings as to make them exceed 250*l.* a year, and so take them out of the definition of "workman," and so out of the Act altogether.

If nothing whatever has been agreed as to wages, there will be the usual implied contract to pay the market rate for the time employed (*r*), though in all cases the arbitrator will take into consideration all the facts before him and from them draw his own conclusions. Particularly will this be so in the case of overtime and extras. Overtime must be included in earnings, but what weight it and extras should have must depend on the particular circumstances of each case. When in their nature they are more or less regular, they would practically be the same as wages and treated accordingly, whilst, on the other hand, it would not do to inflate an average with an extra that might never occur again: *e.g.*, a gratuity for putting out a fire, or the overtime paid for such

(*q*) *Sharp* v. *Midland Rly. Co.*, (1903) 2 K. B. 26; *G. N. Rly.* v. *Dawson*, *supra*.

(*r*) *Jones* v. *Walker* (1899), 105 L. T. 579.

service might well be largely discounted, whilst a shilling paid to men turn and turn about for locking up premises might nearly be valued at its full amount.

DIRECTION IN LAW III.

SUBJECT TO CERTAIN MODIFICATIONS, ONLY EARNINGS IN AN EMPLOYMENT BY THE SAME EMPLOYER ARE TO BE RECKONED.

Notwithstanding the discretion largely left to the arbitrator this rule is still operative. It will be seen by para. (1) (a) the compensation in case of death is to be *a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury . . .*; or in case of a shorter period, *the amount of his earnings shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer.* So also in cases where incapacity results from the injury the compensation is to be based on *his average weekly earnings during the previous twelve months if he has been so long employed;* but in case of a shorter period it is to be based on his average weekly earnings *for any less period during which he has been in the employment of the same employer.*

These phrases make it quite clear that, subject to the modifications dealt with in Direction in Law V., only earnings in an employment by the same employer can be considered, and that if a man has been working for A. and then for B. and then for C., the terms of his employment with A. and B. can in no way be considered.

In the case of industrial disease it does not always follow that the employer who last employed the workman will be the one liable for the compensation. Where this is not so sect. 8, subsect. (1) (d), provides—

> (d) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.

DIRECTION IN LAW IV.

THE MEANING TO BE ATTRIBUTED TO "EMPLOYMENT BY THE SAME EMPLOYER."

The average weekly earnings, we have seen, is to be arrived at from the terms of the employment by the same employer; and by para. (2) (c) such employment is defined as follows:—

> (c) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

This clause is substituted for the learning involved in the old rule that the employment considered had to be continuous employment. Still, note this clause is imperative and requires the employment to be with certain exceptions, as before, uninterrupted. The importance of this rule before the discretionary power of the arbitrator was increased could not be overstated. For example, suppose a man had been employed a fortnight, then was away for eight weeks, and had then worked another fortnight, when he was injured, the question whether the arbitrator was bound to regard the whole employment as broken or continuous was more serious than any other consideration.

The rule to obtain the average weekly earnings was, and to a large extent in ordinary cases probably will be, to add together all the earnings in a given period and divide by the number of weeks in such period. Applying this rule to the example given, and assuming the earnings to have been 2*l.* a week, we get—(a) If no break in employment, four weeks' earnings, or 8*l.* divided by 12, or an average weekly earning of 13*s.* 4*d.* with a corresponding compensation of 6*s.* 8*d.* per week. (b) If there was a break in the employment, then the last two weeks only would be considered, and the two weeks' earnings of 4*l.* divided by two would give an average of 2*l.* a week and a compensation amount of 1*l.*

That what a man would earn, on an average, week in week out could vary between 2*l.* and 13*s.* 4*d.* according to the highly technical construction of a highly technical rule was, in the words of Euclid, absurd. And note, an intermediate amount, probably the correct one, it was not open to an arbitrator to find. Although this is now changed, as we shall see when we deal with the modification of this rule, and although the arbitrator may now give such intermediate sum if it seems just to him, yet even now, what is a termination of an employment and what constitutes a new employment may be most material. This will be a question of fact, and an arbitrator may well decide he sees no reason why he should resort to any data for arriving at the average other than those furnished by the uninterrupted employment by the same employer. Thus, whilst the clause requires change of grade or illness, or other unavoidable cause to break the continuity, in this respect very much following the old decisions, yet it leaves open to the arbitrator to reckon in the period of service, holidays, or other off-days taken by the workman (*s*).

The great importance of the rule is well exemplified in *Giles* v. *Belford* (*t*). Here a stevedore's labourer had been employed by a firm for a greater or less number of days during the preceding year. He was not employed by them from the 2nd to 10th November, but was continuously so employed from the 11th to the 28th. The County Court Judge found there was a new employment during this last period, a period when the wages were much swelled by overtime, and gave the maximum compensation of 1*l.* a week. Had the average been taken over the whole year, it would not have been anything like this amount.

(*s*) Under old Act absence for a lengthy period on account of ill-health was held a break in the employment, though the workman returned without any special re-engagement. *Appleby* v. *Horseley Co.* v. *Lovatt*, 15 T. L. R. 410; *Hewlett* v. *Hepburn*, 16 T. L. R. 56. As also absence on account of a strike. *Jones* v. *Ocean Coal Co.*, (1899) 2 Q. B. 121. Absence to take a holiday was decided otherwise. *Keast* v. *Barrow Hematite Steel Co.*, 15 T. L. R. 141.

(*t*) (1903) 1 K. B. 843.

DIRECTION IN LAW V.

MODIFICATION OF RULE, ONLY EMPLOYMENT BY THE SAME EMPLOYER TO BE RECKONED—

(a) *Where not practicable to arrive at "average" by ordinary methods;*

(b) *Where there are concurrent contracts of service.*

As to (a)—

In ordinary cases, probably in ninety-five out of a hundred, a man's employment by his own master will furnish sufficient data to satisfy an arbitrator he can arrive at a just estimate of what the weekly average should be. In the other cases he may not be so satisfied, and then by para. (2) (a) he may be guided by other considerations.

(a) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

From the above paragraph it will be seen that where the time has been (a) too short, or the employment (b) casual, or its terms such as not to give (c) practicable data from which to arrive at the

proper average, an arbitrator may have regard to the similar earnings of a similar workman for the twelve months previous with (a) the same employer, or (b), if no such workman is so employed, of any workman similarly employed in the same district.

Now what an arbitrator in every case will want to arrive at is the average earnings over a sufficiently lengthy period so that additions and extras and overtime, on the one hand, may not unduly inflate the amount received, and absences, holidays, strikes and sickness may not unduly diminish it on the other, but that such time may be long enough for such items to average themselves out.

It will be noted the Act does not give a man compensation on the basis of his current wage; it might well have done so, but it does not. It gives him compensation on the basis of his average earnings, and preferably based on a twelve months' employment. And this seems what an arbitrator should try to arrive at when the service has been for a less time: what would the man have probably received in earnings in twelve months had the service so long continued? Having arrived at this amount, he will speedily settle what his average earnings should be taken at. Having this in view, circumstances may well arise when he can find as a fact that any time less than twelve months is too short for him to derive a just average from. For instance, suppose works stopped off and on, through new machinery, &c. being required, for twenty weeks out of thirty, and a man then injured. An arbitrator might well find it unjust to him to award him at the rate of only ten weeks' earnings divided by thirty, and equally unjust to the master to regard the employment as interrupted, and regard, say, the last five weeks only of full work, and award the man compensation on that basis, viz., five weeks' earnings divided by five only. He would clearly feel an amount between the two would be the correct one, and this he would be entitled to award under the powers given him by this paragraph.

Then as regards casual labour. The man's own employment furnishing no sufficient data on which to found an average, the arbitrator may have regard to what a similar workman, in this case a similar casual labourer, had actually earned during the previous

twelve months with the same employer, or, failing any such workman, what some similar person in the same grade employed in the same class of employment in the same district had earned. No doubt this will result in a great deal of contradictory evidence being given. On the one hand, the employers will insist on their right to have taken as the basis of the compensation the earnings of some man actually employed by them; on the other hand, the workman will want taken as the standard some model casual labourer who has been employed every day during the previous twelve months. Probably in this the arbitrator will exercise his discretion and, influenced by both, will find as a fact that one class of evidence or other, or both, were not sufficiently reliable to furnish a sole guide for fixing the average, and if he so acts it is difficult to see for what reason his decision can be interfered with.

So in other difficult cases, when the ordinary methods of assessing the average are inapplicable, the arbitrator can similarly act.

As to (b). *Where there are concurrent contracts of service.*

This is provided for by para. (2) (b) as follows:—

> (b) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

Here, we would point out, it is difficult to see how this clause can apply to casual labour. The very meaning of casual labour is chance labour as opposed to regular employment: a man without a job asks for one and gets it. For that job there is a contract, but it is difficult to see how at the same time there can be another concurrent contract also running. The very essence of casual labour

is seeking and getting one job after another and making a contract for such job or jobs as got and on the spot.

Perhaps the question may arise whether a man who has a regular job, say every Wednesday, and other days seeks work casually, may not be held to have concurrent contracts, though it seems doubtful, and more especially so if it is a case of increasing the liability of, say, the Wednesday employer. He may well argue that such other contracts were consecutive contracts and never concurrent with his, as they began and ended independently of his contract, and that on the Wednesday when the man came to work for him he might have had contracts previous to his, and in the future he might have contracts subsequent to his, but he never had a contract subsisting at the same time as his. If, on the other hand, the workman had regular contracts, contracts not entered into and at once carried to completion, he would come within the clause. Only then he would not be a casual or chance labourer. Thus, for instance, a gardener might well be employed every Monday by one employer, every Tuesday by another, and so on through every day of the week. Here all such contracts would be concurrent, and would have to be taken into account. Or it might be on some days he would have no regular employment. On these days he might seek a job. Then on such days he would be a casual labourer, and what he then earned would probably be excluded from his aggregate earnings.

As regards the merits of this clause, this is not the place to discuss them. It involves a great change from the former Act and will be particularly serious to small employers of labour. Formerly a man's liability was practically proportionate to the amount he paid. Thus if a clerk gave a man 2*s.* for half a day's work a fortnight to look after his garden, his liability was about 6*d.* a week. Now if he employ the same man to do the same job regularly and the man is injured, say, by a rusty nail setting up blood poison, he will find the compensation he has to pay is based on the scale of all the man earned during the week—some twenty shillings or more.

DIRECTION IN LAW VI.

PROVIDED THE GRADE OF LABOUR HAS REMAINED UNCHANGED, IT IS NOT MATERIAL THAT THE WORK ENGAGED UPON HAS VARIED, NOR THAT THE EARNINGS HAVE VARIED.

We have seen para. (2) (c), defining employment, says:—

Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.

The materiality of change of grade is evident. Instead of the average weekly earnings being based on the previous earnings, only those paid after the change are to be considered. Here, again, whilst an arbitrator must take the wage paid after the change and not the lower, or maybe higher, wage previously paid, yet still he may exercise his discretion according to para. (2) (a) as to how he arrives at his average. He may well find that the employment after the change of grade has been too short to furnish sufficient data from which to derive an average. Or he may find that after the change of grade there has been sufficiently long uninterrupted employment upon which he can act. Change of work or change in the rate of wage paid does not interrupt employment (*u*): for instance, a man put to another job, say fitting, instead of moulding. Perhaps if the work were entirely different it might be a question whether there was not evidence of a new contract, as when a man employed as a joiner was kept on as a gardener. But in all cases where the wages, however estimated, have from time to time varied, all actually received will have to be taken into account, and the weekly average will not be based only on the rate of those wages paid at the time of the accident (*x*).

(*u*) *Price* v. *Marsden*, (1899) 1 Q. B. 493.

(*x*) *Price* v. *Marsden*, (1899) 1 Q. B. 493.

DIRECTION IN LAW VII.

IN ARRIVING AT THE DIFFERENCE BETWEEN THE AVERAGE WEEKLY EARNINGS OF A WORKMAN BEFORE THE ACCIDENT AND HIS EARNINGS AFTER IT HAS OCCURRED, ONLY ACTUAL EARNINGS MAY BE CONSIDERED AND NOT WHAT HE MIGHT HAVE EARNED BUT FOR THE ACCIDENT.

In other words, the maximum compensation recoverable will be based on the difference between what the workman earned before, and is able to earn after the accident. Thus an apprentice earning 10*s.* 6*d.* a week had his hand so badly injured that it was not worth while his continuing as an apprentice. His indentures were cancelled, and he became instead a labourer at 11*s.* 2*d.* a week. It was held he could not recover anything under the Act. In actual wages he could prove no loss (*y*).

The operation of this rule thus proving so harsh on apprentices and young persons, their case has now been specially legislated for by the proviso (b) of para. (1) of the First Schedule, giving them additional compensation. This will be further dealt with when we come to the actual estimating of the amount of compensation to be paid.

DIRECTION IN LAW VIII.

IF THE FULL TIME REQUIRED BY THE ACT HAS ELAPSED, THE AVERAGE MUST BE COMPUTED FROM SUCH TIME.

(1) *In case of death.*

In this case the average weekly wage will not have to be computed. The words are clear: the compensation (limited by a maximum of 300*l.* and a minimum of 150*l.*) is to be a sum equal to the earnings during the three years next preceding the injury.

(2) *In case of total or partial incapacity.*

In this case the discretion so largely given to the arbitrator by para. (2) (a) is hardly applicable, for by para. (1) (b), already given, the average weekly earnings must be computed from the

(*y*) *Pomphrey* v. *Southwark Press.* (1901) 1 K. B. 86.

earnings during the previous twelve months, and this will be such total earnings during such time divided by fifty-two. Whether the wages have varied, or intervals between working days taken place, will be immaterial.

DIRECTION IN LAW IX.

NO DEFINITE LENGTH OF TIME IS REQUIRED, AND AN AVERAGE MUST BE COMPUTED FROM TIME, HOWEVER SHORT.

Originally, under the old Act, it had been held that unless there had been two weeks' service at least, the service had not been long enough to furnish sufficient data from which to arrive at the average weekly earnings, and, as no average could be determined, no compensation could be assessed. For a long time the decisions on this head overshadowed the whole Act, but were finally disposed of by *Lysons* v. *Knowles* (z), which decided compensation was not to be withheld because of mechanical difficulties in computing the amount. This is now the law to-day, and the difficulties in the way of assessing the average have been removed by para. (2) (a) of Schedule I., with which we have also dealt in Direction in Law V. We have seen that if the employment is of a casual nature or too short, or such that it is impracticable to arrive at an average from it, the arbitrator may have regard to the earnings during the previous twelve months of a man similarly employed with the same master, or if no such workman exists, to one similarly employed in the same district.

The masters, we have observed, will probably wish to exclude the more doubtful evidence of outside workmen, but to do so they will have to prove that the workman they rely on has been uninterruptedly employed by them during the twelve months previous to the accident, that he was of the same grade as the workman injured, and that he did the same class of work.

(z) (1901) A. C. 79.

The assessment of the amount of compensation.

The average weekly earnings having been ascertained, the enactments of the Schedule to the Act are clear and may be classified as follows:—

(a) In case of death, when there are—
  (i.) Dependants wholly dependent.
  (ii.) Dependants in part dependent.
  (iii.) No dependants.

(b) In case of injury resulting in—
  (i.) Total incapacity.
  (ii.) Partial incapacity.

As to (a) (i.) *In case of death where there are dependants wholly dependent.*

The amount of compensation will be a sum equal to the amount of the deceased's earnings with the same employer during the preceding three years if the employment has been so long; or a sum equal to 156 times the amount of his average weekly earnings, arrived at according to the rules already discussed.

In both cases the maximum compensation will be 300*l.*, and the minimum 150*l.*

As to (a) (ii.) *In case of death where there are dependants in part dependent.*

A sum, not exceeding that payable when there are dependants wholly dependent, reasonable and proportionate to the injury sustained.

Under Article I., Part I., we have discussed who are entitled to claim as dependants, and in determining what effect is to be given to the words "reasonable and proportionate to the injury sustained," we find that the governing principle of the decisions has been, what loss have the applicants suffered, rather than what other resources are they possessed of. The question has not been so much whether the applicants have been dependent in the popular sense of the word as whether they have profited by the earnings of the deceased. This loss of profit or benefit will be a question of fact for the arbitrator to decide.

(a) (iii.) *In case of death where there are no dependants.*

A sum not exceeding 10*l.* for the reasonable expense of the deceased's medical attendance and funeral expenses, to be paid to whom it is due.

In assessing the compensation under (a) (ii.), in the case of death when applicants are only in part dependent, the arbitrator may, as long as he does not exceed the maximum allowed, also give any sum under this head in addition (*a*).

But according to a Scotch case (*b*), which hardly appears to be sound, claims under these heads are mutually exclusive, so that one set of persons could not claim under (a) (ii.) and another set under (a) (iii.); and, formerly, if those wholly dependent were found entitled, it excluded all those in part dependent from claiming under (a) (iii.). The rights, however, of dependants *inter se* are provided for by para. (8) of the First Schedule, and are dealt with later on in the next chapter.

Further, in assessing the compensation payable in case of death, allowance must be made for all payments made to the deceased himself before his death, and if made in pursuance of an award it remains to be seen how far his dependants are entitled to have it re-opened (*c*) and a new award made.

Next as to (b) (i.) *Where the injury results in total incapacity.*

In this case the compensation will be a sum not exceeding half the workman's average weekly earnings as ascertained, with a maximum not exceeding 1*l.* a week. If the workman is under twenty-one, special provision is made for him by para. (1) (b) :—

> (b) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings, one hundred per cent.

(*a*) *Bevan* v. *Crawshay*, (1902) 1 K. B. 25.

(*b*) *Fagan* v. *Murdoch*. 1 F. 1179; by no means as satisfactory as *Re Robinson*, 1904, 39 L. J. 164, C. C.

(*c*) *O'Keefe* v. *Lovatt*, 18 T. L. R. 57. And see para. 9 (d), Sched. II.

shall be substituted for fifty per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.

And by para. (16), First Schedule, provision is made for reviewing his compensation.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

Where compensation has been paid for over six months, para. (17), Schedule I., provides for its being redeemed.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank (*d*) purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any

(*d*) For rates, see Appendix C.

other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

This paragraph is hardly a triumph of English. Its probable effect is (a) where incapacity is permanent the employer can redeem his liability with a lump sum fixed at seventy-five per cent. of the value of an annuity as stated, and neither more nor less; and (b) *in any other case*, *i.e.*, where incapacity is not permanent, as may be settled by arbitration. In such cases it probably will be held the lump sum given cannot exceed that given for permanent incapacity, and thus an employer, knowing the most he may have to pay, can go to arbitration to have it assessed at less if possible. Under the old Act it was decided he could not apply to compound and at the same time limit the maximum he would give (*e*). So, formerly, there was no limit of amount, nor were there any definite principles, actuarial or otherwise, settled for arriving at it (*f*); but the arbitrator had to use his own discretion in fixing what was a proper sum for redemption of the weekly payments (*g*). Unless the lump sum is rigidly fixed as stated these principles will still probably apply.

Sect. 18 provides for workmen permanently incapacitated and in receipt of compensation leaving the United Kingdom.

By Schedule II. (19) such agreements must be registered.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity

(*e*) *Castle Spinning Co.* v. *Atkinson*, (1905) 1 K. B. 265.

(*f*) *Pattinson* v. *Stevenson*, 109 L. T. 106; affirmed by C. A., June 30, 1900.

(*g*) *Grant and Alderoft* v. *Conroy*, 6 W. C. C. 153.

resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(b) (ii.) *Where the injury results in partial incapaci..*

By proviso (a) to sub-sect. (b) of para. (1) of S[illegible] 1. it will be noted that *if the incapacity lasts less than t[illegible] as no compensation shall be payable in respect of the first week.* Subject to this, compensation is payable for the whole time of incapacity, and without excluding the first two weeks, as under the old Act.

As to amount, the arbitrator may award any sum not exceeding that payable for total incapacity right up to the limit of the maximum of 1*l.* a week. The direction in paragraph (3), that the weekly payment is not to exceed the difference between what the workman could earn before and after the accident, is merely a guide to the arbitrator in determining the amount, and not the limit he must give in every case (*h*). Nor does it lay down that the actual loss of wage-earning capacity is to be equally borne by the workman and his employer (*i*); and if, for instance, the workman had originally been earning 2*l.* a week and had had compensation assessed at 1*l.* a week, the arbitrator might continue such compensation at 1*l.* a week so long as the man was not earning more than another 1*l.* himself. The result practically is, in the case of partial incapacity, to leave the amount to the arbitrator, who will take into account all the circumstances, particularly having regard to what the applicant is ABLE to earn after the accident as well as what steps he has taken to get well again (*k*). Under the similar enactment of the old [illegible]dges had required proof that not only was the workman [illegible] to [illegible] the [illegible] but was

(*h*) *Illingworth* v. *Walmsley*, [illegible]9, 190[illegible] not reported).
(1900) 2 Q. B. 12.
(*i*) *Ellis* v. *Knott*, Times, April [illegible] *Co.*, [illegible], 6, 1[illegible]0.

also able to get it. Failing this they had refused to terminate the payments (*l*), and this practice will probably be continued.

The rights of infants to review of compensation for partial incapacity on their attaining twenty-one are provided for by para. (16), just given, under the head of "total incapacity." Their rights to compensation for partial incapacity in the meantime, *i.e.*, until twenty-one, seem to be governed by the same rules applying to all workmen.

If the question of fitness is in dispute the registrar of the County Court is empowered by para. (15), Schedule I., on the application of *both* parties, to refer the matter to a medical referee, and the medical referee to whom the matter is so referred shall, in accordance with regulations made by the Secretary of State, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

As to the ability to earn, some difficult questions arise when the employer is willing to take back the workman at his old wage.

If the workman go back for such wages, the arbitrator can rightly postpone making his award (*m*) until such times as events may require it, or make an award of a penny a week, which the workman will have a right to have reviewed when there is any change of circumstances (*n*).

But it may be the workman may refuse to go back. Here, if the work would be such as the man could do, the arbitrator, whilst making a declaration of liability entitling him to compensation when circumstances justified it, might in the meantime award him nothing (*o*). On the other hand, if the offer were for a job the man could not effectively do, he might then and there feel justified in assessing the compensation, irrespective of the employer's offer to take him back at the old rate of wages (*p*).

(*l*) *Wilson* v. *Jackson's Stores, Ltd.*, 7 W. C. C. 122; *Clarke* v. *Gas, &c. Co.*, 21 T. L. R. 184.

(*m*) *Chandler* v. *Smith*, (1899) 2 Q. B. 506.

(*n*) *Irons* v. *Davies*, (1899) 2 Q. B. 330.

(*o*) *Powell-Duffryn Steam Coal Co.* v. *Edwards*, Times, July 23, 1900.

(*p*) *Ellis* v. *Knott*, Times, April 9, 1900; *Fraser* v. *G. N. of S. Rly.*, 3 F. 908, Ct. of Sess.

Again, as regards both total and partial incapacity, the words of the Act are "results from the injury." Hence an arbitrator should consider all circumstances, and where, apart from the accident, disease would ultimately have caused incapacity, he might well take this into account in limiting the duration of the payments (*q*). The settlement of this question may now, on application by both parties, be left to a medical referee, and by para. (15) of the First Schedule it is as regards this enacted:—

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the Secretary of State, apply as if the question were a question as to the condition of the workman.

(*q*) *Ward* v. *L. & N. W. Rly.*, L. T. June 29, 1901.

CHAPTER IX.

The Disposition of the Compensation.

(a) *To the Applicant.*

The chief provision as to payment of compensation is that of para. (14) of Schedule II., as follows:—

(14) Any sum awarded as compensation shall, unless paid into Court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

And by para. (19) of Schedule I. it is expressly enacted such weekly payments cannot be assigned, charged, &c., or set off.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

Para. (17) of Schedule I. provides for weekly payments being compounded, and for their being invested for the benefit of the applicant.

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the National Debt Commissioners through the Post Office Savings Bank (*a*), purchase an annuity for the workman equal to seventy-five per cent. of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum (*b*).

One of the conditions of the applicant continuing to receive weekly payments is that he shall remain in the United Kingdom. If he wishes to leave and a medical referee certifies his incapacity is likely to be of a permanent nature, he may apply for the compensation to be paid him under the following para. (18), Schedule I.:—

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman

(*a*) For table of rates, see Appendix C.
(*b*) See *ante*, Chap. VIII. p. 262.

shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable (*c*).

(b) *Amongst Dependants in case of Death of Applicant.*

Who are dependants we have discussed *ante*, p. 171, and para. (8) of Schedule I. determines how they are to be ascertained, and also provides for the settlement of their rights *inter se*.

(8) Any question as to who is a dependant shall, in default of agreement, be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependant shall be settled by arbitration under this Act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependants nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependants (*d*).

The procedure in case of death is governed by para. (5), Schedule I., and Rule 56, made for carrying out its provisions. Formerly the employer had to pay the compensation to the legal personal representative, with certain other complications if there was not one. Now the change is in every way an improvement.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into

(*c*) See *ante*, Chap. VIII. p. 263.

(*d*) This makes clear the debated point, could different classes of dependants take at the same time? This enactment was anticipated by his Honour Judge Cadman in his excellent judgment in *Re Robinson*, 1904, W. C. Journal, 164.

the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependants, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

It will also be observed that the discretion of the Court is very much larger than under the old Act. As regards the sum in Court it may "be invested, applied, or otherwise dealt with by the Court in such manner as the Court in its discretion thinks fit"; whilst formerly the corresponding paragraph was—

(6) *The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.*

In *Manchester* v. *Carlton Iron Co., Ltd.* (*e*), an arbitrator had drawn up a most excellent trust scheme obviously for the benefit of all the dependants, a widow and her children. But, as in this scheme he treated the fund as an entire one to be used as the trustees might think best for the family as a whole, and so possibly to the exclusion of any one of them, the County Court Judge held he had exceeded his powers, and in this view was confirmed by the Court of Appeal, who decided that, under the perfectly plain words of the Act, the amount which each dependant was to have had to be clearly settled (*f*).

Probably the wider words of the new Act are intended to vary

(*e*) 89 L. T. 730.

(*f*) This was so done in *Daniels* v. *Ocean Coal Co.*, (1900) 2 Q. B. 250. In this case the apportionment was as follows:—Total award 246*l.* 7*s.* To widow, 146*l.* 7*s.*—to two infant sons, 50*l.* each.

this ruling and to give arbitrators the power of thus dealing with the compensation. If so, the scheme as set out in the report, too long to be given here, may be studied with advantage.

Para. (14) of Schedule II. provides for payment of the compensation otherwise than into Court.

(14) Any sum awarded as compensation shall, unless paid into court under this Act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

Formerly, where there was more than one dependant and no legal personal representative to whom to pay the compensation, there was a certain danger in paying to, possibly, wrong persons, infants, say, unable to give a good receipt, and yet the employer had no right to require letters of administration to be taken out (*g*). However, this difficulty now is reduced to a minimum, as in every case, if he so chooses, he can pay the money into Court. Again, there are the further provisions of the First Schedule, as follows:—

(6) Rules of court may provide for the transfer of money paid into court under this Act from one court to another, whether or not the court from which it is to be

(*g*) *Clatworthy* v. *Green*, 18 T. L. R. 649.

transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this Act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

This is a very excellent provision, and, *inter alia*, prevents, if neeessary, disreputable parents from seeuring and squandering compensation p[illegible]le to their children under legal disability.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or, subject to regulations of the Treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

CHAPTER X.

Review, Variation and Setting Aside of Orders as to Compensation.

As to review, by para. (16) of Schedule I. it is enacted:—

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound.

A review of weekly payments is not a rehearing nor available as a new trial (*a*), but can only take place when there has been a change of circumstances. Thus, wages wrongly reckoned at the first hearing could not be altered at a review (*b*); their amount was *res judicata*. But it has been held the principle of *res judicata* cannot be applied to personal injuries. An arbitrator having found on expert evidence that a workman was fit for work, was not precluded from finding later on, on further evidence, that his previous conclusion was wrong. If the logic of the decisions had been wanted to be preserved it was simple. On evidence the

(*a*) *Mountain* v. *Parr*, (1899) 1 Q. B. 805.

(*b*) *Crosfield* v. *Tunian*, 1902 2 Q. B. 629.

arbitrator had found the man fit; therefore he was fit, legally. Six months later the man equally proved he was not. Therefore, if he had been legally fit six months previously, there had been a change of circumstances sufficient to justify a review (*c*). Where there is a right to review, the compensation will have to be re-assessed as at an original hearing, and change of circumstances may be in favour of or against either party. Thus, what a man has since been able to earn, as, for instance, in a baker's shop, will have to be taken into account (*d*), though fluctuation in wages since the accident may not be considered (*e*), nor loss of wage-earning capacity on account of age (*f*), nor defective medical treatment (*g*), nor yet refusal to submit to a surgical operation (*h*).

We have seen the Courts have suggested that where workmen who have been injured have been taken back at their old rate of wages, their compensation may well be assessed at a penny a week, with a right to have it reviewed when there is any change in the conditions of their employment (*i*).

So when an apprentice at the time of his accident was earning 7*s*. a week, and was awarded 3*s*. 6*d*. a week compensation, it was held his master was entitled to have the amount reviewed on his proving he was employed with them as a labourer at 11*s*. 2*d*. (*k*).

But this needs some qualification, as, in *Clarke* v. *Gas Light and Coke Co.* (*l*), the Court of Appeal held that it was not enough to merely prove a man was fit to do certain work unless it was also proved he was able to get it.

Again, a review may be agreed to by the parties themselves, when it will operate as a discharge of a former award. Thus, where a man had agreed to take a certain amount as compensation, and then, on being re-employed at his old rate of wages, had agreed

(*c*) *Sharman* v. *Holliday and Greenwood, Ltd.*, (1904) 1 K. B. 235.

(*d*) *Norman and Burt* v. *Walder*. (1904) 2 K. B. 27.

(*e*) *James* v. *Ocean Coal Co.*, (1904) 2 K. B. 213.

(*f*) *Jamieson* v. *Fife Coal Co.*, 5 F. 958. But not so if the man has recovered from his injuries, and his incapacity is due to advancing years alone: *Ferrier* v. *Gourlay*, 4 F. 711.

(*g*) *Beadle* v. *Milton and others*, 114 L. T. 550, C. C.

(*h*) *Rothwell* v. *Davies*, 19 T. L. R. 423; *Sweeney* v. *Pumpherston Oil Co.*, 5 F. 972.

(*i*) *Irons* v. *Davies*, (1899) 2 Q. B. 330.

(*k*) *Pomphrey* v. *The Southwark Press*, (1901) 1 K. B. 86.

(*l*) 21 T. L. R. 184.

to give up such compensation, it was held he was not entitled to fall back on the original agreement when, owing to work being given up, he was dismissed (*m*). In ordinary practice an order for review usually comes into force when made, but an arbitrator may, if he so determine, direct it to take effect from the date of application. When there has been a long interval between such application and the order this does not seem unreasonable (*n*).

So, for the purposes of review, an employer is entitled to have a workman medically examined, this right being provided for by paras. (14) and (15) of Schedule I., as follows:—

(14) Any workman receiving weekly payments under this Act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the Secretary of State, or at more frequent intervals than may be prescribed by those regulations.

Then para. (15) goes on to provide for examination by a medical referee if *both* parties apply to the County Court for an order to that effect (on this, further see Article XIV.), and para. (15), Schedule II., gives power to the arbitrator in the usual course to order examination by such medical referee.

Next as to the **variation and setting aside of orders** as to compensation improperly obtained.

By the new Rule 70 (2) very full powers are given to the judge

(*m*) *Bradbury* v. *Bedworth Coal Co.*, Times, March 17, 1900. It is doubtful if this case would end now exactly as it did then.

(*n*) *Morton* v. *Woodward*, (1902) 2 K. B. 276. Not followed in Scotch cases.

to set aside or vary an order which he is satisfied has been improperly obtained—

(a) by fraud or other improper means;

(b) by the inclusion of any person not in fact a dependant; or,

(c) by the exclusion of any person who in fact is a dependant.

70.—(1) *Notwithstanding anything in these Rules contained, the statutory provisions and rules relating to new trials in actions in the County Court shall not apply to arbitrations under the Act.*

(2) *Where the Judge is satisfied—*

(a) *that any award, or any order as to the application of any amount awarded or agreed upon as compensation, made by the Judge or by an arbitrator appointed by him, has been obtained by fraud or other improper means; or*

(b) *that any person has been included in any award or order as a dependant who is not in fact a dependant as defined by the Act; or*

(c) *that any person who is in fact a dependant as defined by the Act has been omitted from any award or order,*

the Judge may set aside or vary the award or order, and may make such order (including an order as to any sum already paid under the award or order) as under the circumstances he may think just.

(3) *An application to set aside or vary an award or order under this rule shall be made in court on notice in writing, and the provisions of Rule 48 shall apply to the proceedings on such application.*

(4) *An application to set aside or vary an award or order under this rule shall not be made after the expiration of six months from the date of the award or order, except by leave of the Judge; and such leave shall not be granted unless the Judge is satisfied that the failure to make the application within such period was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.*

The Rule 48, governing the proceedings for record of memorandum or rectification of register, is as follows:—

48. *The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the Judge to rectify the register pursuant to paragraph (9) of the second schedule to the Act.*

(a) *The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.*

(b) *The notice shall be filed with the registrar, and copies thereof shall be served—*

(i) *in the case of an application for an order that a memorandum be recorded, on the party disputing the memorandum or objecting to its being recorded, and on all other parties interested;*

(ii) *in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these Rules as to the parties to an arbitration;*

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the Judge or registrar gives leave for shorter notice.

(c) *On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.*

(d) *On the hearing of the application the Judge may make such order or give such directions as he may think just, regard being had, in the case of an application for an order that a memorandum of an agreement be recorded, to proviso* (d) *to paragraph* (9) *of the second schedule to the Act.*

(e) *The provisions of the Act and these Rules as to the costs of an arbitration before the Judge shall apply to any such application* [*Rule* 45].

So much for variation of an order improperly obtained. Para. (9) of Schedule I. provides for the **variation or setting aside of an order** being improperly or otherwise **unsatisfactorily carried out** as follows:—

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependants, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum payable

to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

And by Rule 58 it is provided that application for variation of an order under this paragraph shall be as follows :—

58.—(1) *An application for the variation of an order of the court under paragraph* (9) *of the first schedule to the Act may be made by any person interested.*

(2) *The application shall be made in court on notice in writing, stating the circumstances under which the application is made, and the relief or order which the applicant claims.*

(3) *The notice shall be filed with the registrar, and notice thereof shall be served on all persons interested in accordance with Rule* 48; *and the provisions of that rule and of Rule* 56 *shall apply to the proceedings on such application.*

CHAPTER XI.

As to Remedy to be Adopted.

At this point, before discussing the procedure special to the Workmen's Compensation Act, it may be well to consider which remedy is the best to be adopted. At the outset, the question which will most trouble the practitioner will be—How should he proceed? At Common Law? Under the Employers' Liability Act or under this last Act of 1906? The relative merits of the various methods of proceeding may be thus briefly summarized.

At Common Law there is no limit to the amount of damages recoverable either in case of death or injury. Its measure will be the amount of damage sustained (*a*).

So also under the Employers' Liability Act, except that the amount recoverable is limited to a maximum of three years' earnings of persons in a similar class of employment.

Under the Act in case of death the total recoverable is about as favourable as under the Employers' Liability Act, save that there is the further maximum limit of 300*l.* imposed, with, perhaps, in some instances the beneficial minimum of 150*l.*, as the least amount recoverable.

In case of temporary injury, proceedings under the Workmen's Compensation Act are only about half as favourable. Both at Common Law and under the Employers' Liability Act a workman can prove for the whole of the wages he may have lost, with other expenses incurred, whilst under the Act he is limited to one-half his average weekly earnings, with a maximum of 1*l.* a week (*b*); nor can he recover anything for pain and suffering (*c*).

On the other hand, in case of permanent disability, it may possibly be, an annuity of so much a week for life may be preferable

(*a*) See page 55, *ante*.

(*b*) The relative advantages will be well seen from a perusal of *Tong* v. *G. W. Rly.*, 18 T. L. R. 566. See *ante*, Article XI.

(*c*) (1899) 2 Q. B. 330.

and capitalize out at a larger sum than that usually given by juries for the same injuries.

But otherwise, on the whole, if there is a case under either of the former alternatives, the advantages of so proceeding are so decided that he will probably prefer recourse to one of them rather than to the latter. As regards the immediate employer, he can more or less safely do so.

By sect. 1 (4) it is enacted:—

(4) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

Hence, on reading this sub-section, it will be seen that the plaintiff, by so proceeding, does not risk losing his compensation, but takes a decided risk in the matter of costs.

If the question to be decided practically involves the same witnesses and the same expense, whatever the form of proceeding, the judge may exercise *his discretion* rightly if he makes the order as in *Cattermole* v. *The Atlantic Transport Co.* (*d*).

(*d*) (1902) 1 K. B. 204.

Here, on the failure of an action brought under the Employers' Liability Act, 1880, under the above sect. 1 (4), the judge, as arbitrator, assessed compensation under the Workmen's Compensation Act, and gave the plaintiff the costs of the proceedings.

This, it was argued in the Court of Appeal, was *ultra vires*, but the Court upheld the decision, and in their read judgment said :—

"The learned judge has dismissed the action, but has ordered the defendant to pay all the costs of the proceedings, and has not ordered any costs to be deducted from the compensation. In general this would not be right; but such an order may be justified by special circumstances, as if, for example, the judge were satisfied that no costs had been caused by the plaintiff bringing an action instead of proceeding under the Act. This matter is one within the discretion of the judge; it has not been shown that the judge exercised that discretion on a wrong principle; and in the result the appeal fails, and must be dismissed with costs."

As it has been seen in Article XI., that if the workman proceeds under the Workmen's Compensation Act he will lose his rights at Common Law and under the Employers' Liability Act, 1880, the desirability of trying under these first is too great not to be seriously considered in every case.

So, as regards defendants, it will demand their immediate consideration, whenever an action is brought instead of a claim for compensation, whether they should not at the earliest possible moment admit their liability to so pay compensation, so as to make themselves safe on this question of costs (*e*). Otherwise, in defending an action for negligence, they may find themselves liable for the same costs as if they had disputed liability for the accident.

As regards making claims against third parties, a considerable change has been made in the practice. Now concurrent proceedings may, by sect. 6, be taken by a workman both against them and against those liable to pay compensation under the Act. But he cannot recover both damages and compensation, and the receipt of the one is a bar to further claim to the other. Probably in most

(*e*) See *Skeggs* v. *Keen*, Times, June 19th, 1899; and Form 16 of Rules.

cases the most judicious way of proceeding would be, as usual, to give the earliest possible notice and make the earliest possible claim under the Act, and, having done this, allow such proceedings to rest whilst prosecuting the claim against third parties. In this course those liable under the Act would probably concur, as it would be to their interest such third party liability should first be settled, and settled w[illegible] their incurring the risk of paying costs. If the plaintiff [illegible] does so with the usual liability as to costs, but by para. (19), Schedule I., his weekly payments will be safe.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

Thanks to this proviso it would seem that, save in the express case provided for by sect. 1 (4) of the Act, just given, a workman's compensation is for no reason to be taken from him either for costs or other liability (*f*).

(*f*) See *Rosewell Gas Coal Co.* v. *M'Vicar*, 7 F. 290, where costs of review could not be set off against compensation.

CHAPTER XII.

Provisions Special to Seamen.

By sect. 7 (1) of the Act seamen are specifically brought within its scope. The Act applies to them as to other workmen, subject to certain modifications necessary owing to the nature of their calling. These special provisions are as follows:— Application of Act to seamen.

7.—(1) This Act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this Act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:—

Masters.—This word is not defined in this Act or by reference. Probably the meaning which will be attributed to it will be the same as that given to it by the Merchant Shipping Act, 1894, s. 742, viz.:—

"*Master*" *includes every person* (*except a pilot*) *having command or charge of any ship.*

Seamen, &c.—By sect. 13 of the Act it is enacted—

13. "Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894.

By sect. 742 of the Merchant Shipping Act, 1894—

"*Seaman*" *includes every person* (*except masters, pilots, and apprentices duly indentured and registered*) *employed or engaged in any capacity on board any ship;*

and by sect. 49 of the Merchant Shipping Act, 1906, "seamen," for the purposes of Part IV. of that Act, which deals with the relief and repatriation of distressed seamen and seamen left behind abroad, is thus defined:—

(2) *The expression "seamen" includes not only seamen as defined by the principal Act, but also apprentices to the sea service.*

Whether this section applies or not is not very material, as apprentices are expressly included in the Act itself, and are independent of the meaning to be given to seamen. At the same time it is a fair example of the difficulties attendant on all legislation by reference to other statutes. By the Interpretation Act, 1889 (*a*), the references to clauses of old Acts are to be sought for and found, whether with or without modification, in the corresponding clauses of amending or consolidating Acts, with the result that changes intended in one branch of law may have far-reaching and unexpected results in other directions neither contemplated nor desired. It is not suggested this is one of those cases, but under the old Act this certainly happened in more than one instance. As thus defined, the word "seaman" is most comprehensive, and it is very improbable there will be any leaning to restricting its meaning. In particular, one must not be misled by the more limited meanings given to it when used in connection with other statutes, *e.g.*, as in *The Ruby No. 2* (*b*), a decision under the Admiralty Court Act of 1861 (*c*). On the contrary, it is probable the tendency will be to extend rather than narrow the meaning. How far this will be so is not very material in the United Kingdom, where applicants, if not seamen, will be entitled as workmen. But abroad, in foreign ports it will be most important where for the time masters and crews, not being actually *employed or engaged in any capacity on board any ship*, are yet employed or engaged on shore in connection with the ship. At first sight it would seem the definition given would limit the operation of the Act solely to those cases happening on the ship itself. But judging by the analogous cases under the Admiralty

(*a*) 52 & 53 Vict. c. 63, s. 38, sub-s. 1.

(*b*) (1898) P. 59, where a ship's husband tried to bring himself within the term "seaman."

(*c*) 24 Vict. c. 10.

Court Act of 1861 just referred to, this would seem somewhat doubtful. By sect. 10 of this Act, "*The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship.*"

Now here, it will be noted, the rights under this section are similarly limited to "wages earned by him on board the ship." But notwithstanding this limitation, a master has been held entitled to sue in Admiralty for his wages, although the vessel was in dock and he did not sleep on board, and performed many of his duties on shore (*d*); as also a mate who had been paid off, and who, without signing any fresh articles for the outward voyage, remained on board to superintend the discharge and re-lading of the ship whilst in port, and who, when the ship was taken into dock for repairs, continued to superintend them also (*e*). And similar decisions have been given in the case of seamen engaged in rendering services on board a ship in port (*f*); of a woman who acted as caretaker of a ship (*g*). So, from the wording of sub-sect. (a) of this section, a presumption might fairly be inferred that other accidents, other than those actually taking place on board, were contemplated, as notice is required in one case and is not in the other. Whether the Act, after being thus extended to masters and seamen engaged in maritime services in port or on shore, will come to be also extended to shoremen engaged in assisting on board the ship or in connection with the ship, remains to be seen; but if not, there might be the curious, though correct (*h*) result, of two men employed in the same way, injured by the same accident, say by the fall of a gangway, where one would recover and the other would not. But an Act of Parliament is like a

(*d*) *The Chieftain* (1863), Br. & L. 104.

(*e*) *The Queen* v. *Judge of City of London Court and S.S. Michigan*, 25 Q. B. D. 339.

(*f*) *Wills* v. *Osman*, 2 Ld. Ray. 1044; and *Re The Great Eastern S.S. Co.*, 5 Asp. Mar. Law Cas. 511; and *R.* v. *Lynch*, (1898) 1 Q. B. 61.

(*g*) *The Jane* (1823), 1 Hag. Ad. 187.

(*h*) See *infra* as to the seamen, &c. entitled being limited to those seamen who are members of the crew.

bolting horse with the bit between its teeth, one never knows where it will stop.

As to pilots, though not included in the definition, they are yet specifically brought within the provisions of the Act by sub-sect. (3) of sect. 7, as follows:—

(3) This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

The material sections of the Merchant Shipping Act, 1894, here referred to, are as follows:—

(742.) *Pilot means any person not belonging to a ship who has the conduct thereof*, and

PART X.—PILOTAGE.

(572.) *This part of the Act extends to the United Kingdom and the Isle of Man only, but applies to all ships British and foreign.*

(586.) *A pilot shall be deemed a qualified pilot for the purposes of this Act if duly licensed by any pilotage authority to conduct ships to which he does not belong.*

(596.) This section provides for the inclusion of unqualified pilots taking charge of a ship on certain occasions. (See *The Carl XV.*, (1892) P. 132.)

Whilst on the subject of pilots being included within the Act we must inquire what effect it will have on sect. 633 of the Merchant Shipping Act, 1894, which enacts:—"*An owner or master of a ship shall not be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of that ship within any district where the employment of a qualified pilot is compulsory by law.*"

In the first place, if a pilot is held entitled to recover under the Act he will be entitled whether he is in fault or no. The element of negligence does not come in. Then suppose others also are injured, then the owner will have to compensate them; but under sect. 6 of the Act he will be entitled to an indemnity from a third

party in fault in this case—the pilot. Thus, we should arrive at the interesting result, an owner having to compensate the pilot, and the pilot having to compensate everyone else. If legislators only would draw their own Acts independent of all others, what tangles they would save! Probably this sect. 633 of the Merchant Shipping Act, 1894, will be ignored as by inference negatived by the Act.

Special provisions are made by the Act for those in the service of the Crown as follows :—

9.—(1) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this Act would apply if the employer were a private person :

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the Royal Household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant, may frame schemes with a view to their being certified by the Registrar of Friendly Societies under this Act. 50 & 51 Vict. c. 67.

"**Ship**," "**Vessel**."—By Merchant Shipping Act, 1894, s. 742—

"*Vessel*" *includes any ship or boat, or any other description of boat used for navigation.*

"*Ship*" *includes every description of vessel used in navigation not propelled by oars.*

The meaning of ship and vessel is so large that it obviously includes all craft sailing for other shores, and as regards the United Kingdom applicants, if not entitled as seamen, will be as

workmen, so that the precise meaning of the words is not very material; at the same time it will be observed the definition is limited to those ships and vessels used in navigation and not propelled by oars. In other words, it will include every boat "where it is its business really and substantially to go to sea" (*i*). So also it has been held to include a spritsail barge navigated on the upper tidal waters of the Thames (*k*), and a hopper barge used for dredging, and not furnished with any means of propulsion (*l*), though not a vessel for four years used as a coal hulk (*m*). A steam launch used on an artificial lake has been held not to have been used in navigation (*n*), as also a steam barge used solely on a canal (*o*). So it must be noted the words "not propelled by oars" do not exclude all vessels which are at times propelled by oars (*i*)

Workmen.—To recover, seamen, &c. must also be workmen within the meaning of the Act, so that there will be excluded those employed otherwise than by way of manual labour (*p*) whose remuneration exceeds 250*l.* a year, those whose employment is of a casual nature and employed otherwise than for the purposes of the employer's trade or business, members of a police force, outworkers or members of the employer's family; but save as aforesaid, there will be included any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing. Thus it well may be that captains of large ocean liners or other officers not employed in manual labour, receiving more than 250*l.* a year salary, would not be within the Act. As regards the other exceptions, it is difficult to see how they would apply except in the case of members of an employer's family, or possibly a policeman taken to sea for any special reason as such, and who would come within the definition of seaman in the Merchant Shipping Act, 1894,

(*i*) *Ex parte Ferguson*, L. R. 6 Q. B. 280.
(*k*) *Corbett* v. *Pearce*, (1904) 2 K. B. 423.
(*l*) *The Mac*, 7 P. D. 126.
(*m*) *European, &c. Mail Co.* v. *P. & O. Steam Nav. Co.*, 14 L. T. 701.
(*n*) *Mayor of Southport* v. *Morris*, (1893) 1 Q. B. 359.
(*o*) *The Gas Float "Whitton,"* (1897) A. C. 337.
(*p*) *Cook* v. *North Metropolitan, &c.*, 18 Q. B. D. 683; *ante*, p. 88.

s. 742, given above, which includes *every person employed or engaged in any capacity on board any ship.*

By sect. 7 (2) members of the crew of a fishing vessel remunerated by shares in the profits or gross earnings, are expressly excluded.

(2) This Act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

How this section will be interpreted in the case of those paid in part by wages and in part by profits or gross earnings remains to be seen. The ordinary test of master and servant, or whether the venture is a partnership, will not apply, as the very section is framed in contemplation of the relation of master and servant being in existence. Whether we ought to read the section as *solely remunerated* or *in part remunerated* it is impossible to forecast apart from the actual facts of an actual case. It seems possible, having regard to the consideration that in these cases master and men, or owner and crew, are so much on an equality in every way, that this exception will be rather extended than narrowed in its meaning. If, however, the section comes to be first construed when it is the case of a rich owner or syndicate or rich underwriters against poor or distressed seamen or their widows, the reverse may probably be the result.

Members of the Crew.—In addition to being "workmen," masters, seamen, &c. must also be members of the crew. Thus, whilst seaman and apprentice will include all engaged in any capacity except the master or pilot, yet the further question must be asked, are they also members of the crew? What meaning will be given to this term? All having signed articles will no doubt be included. Probably all about to sign articles, as well as those discharged after signing articles, if injured in the course of work done before or after, and as part of the work of the voyage to which the articles refer (*q*).

(*q*) See similar cases discussed under heading "Seamen," *supra.*

But would it apply to those temporarily engaged to supplement the work of the crew, or to those on board in the employ of others interested, other than the owner, *e.g.*, of a charterer who engages someone to supervise the cargo. If so, might some seamen have rights against owners and some against charterers; or are owners only liable, or only those owners who are employers, or are the actual employers the ones alone to be liable? The answer to these questions will undoubtedly depend on the way the cases come before the Courts. One set of facts may easily result in a hard and rigid interpretation being given to the words "members of the crew," perhaps limiting it to those alone who have signed articles, whilst another set of facts might pave the way for the words being almost entirely disregarded.

Possibly as no two cases are ever identical, every tub may be left to stand on its own bottom, and it may be held to be a question of fact to be determined in every case by the County Court judge or other arbitrator by whom the case may be first tried.

Registered.—So also in extending the Act to master, seamen, &c., in addition to their having to be workmen within the meaning of the Act, and members of the crew, the ship to which they belong must also be either registered in the United Kingdom or else be a British ship or vessel of which the owner, or if more than one, the managing owner, or manager must reside, or have his principal place of business, within the United Kingdom.

The formalities of registration are provided for by Part I. of the Merchant Shipping Act, 1894, ss. 1—91, and more especially it is enacted by sect. 1 that a ship shall not be deemed a British ship unless owned wholly by persons of the following description in the Act referred to as persons qualified to be owners of British ships, and who may be briefly epitomized as natural-born British subjects, persons naturalized, denizens and bodies corporate, established under and subject to the laws of some part of his Majesty's dominions, and having their principal place of business in those dominions. Sect. 2 imposes the obligation of registering every British ship, with the exception made by sect. 3, in favour of—(1) river or coasting ships used in the United Kingdom and

under fifteen tons burden, and (2) ships not exceeding thirty tons burden, and not having a whole or fixed deck used for fishing or coast trading on the shores of Newfoundland or in the Gulf of St. Lawrence and the adjacent coasts.

By sect. 13 it is enacted :—

> "Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is entrusted by or on behalf of the owner.

The conditions at sea being obviously different to those at home, sect. 7 (1) provides for modification of procedure consequently necessary.

Clause (a) provides for **notice of accident** and **claim for compensation** as follows :—

> (a) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident :

and clauses (b) and (g) provide for the **case of death** :—

> (b) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant :
>
> (g) Sub-sections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependants of masters, seamen, and apprentices lost with their ship as

they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands.

The following are the sub-sections of sect. 174 of the Merchant Shipping Act, 1894, referred to:—

174.—(2) *In any proceeding for the recovery of the* wages, *if it is shown by some official return produced out of the custody of the Registrar-General of Shipping and Seamen, or by other evidence, that the ship has twelve months or upwards before the institution of the proceedings left a port of departure, she shall, unless it is shown that she has been heard of within twelve months after that departure, be deemed to have been lost with all hands on board, either immediately after the time she was last heard of or at such later time as the Court trying the case may think probable.*

(3) *Any duplicate agreement or list of the crew made out, or statement of a change of the crew delivered under this Act, at the time of the last departure of the ship from the United Kingdom, or a certificate purporting to be a certificate from a consular or other public officer at any port out of the United Kingdom, stating that certain seamen and apprentices were shipped in the ship from the said port, shall, if produced out of the custody of the Registrar-General of Shipping and Seamen, or of the Board of Trade, be, in the absence of proof to the contrary, sufficient proof that the seamen and apprentices therein named as belonging to the ship were on board at the time of the loss.*

And by sect. 742 of the Act "wages" includes emoluments.

The procedure as to such notice so far as it is special to seamen is regulated by Rule 36 as follows:—

36.—(1) *In the application of the Act and these rules in the case of masters, seamen, and apprentices to the sea-service and apprentices in the sea-fishing service, who are workmen within the meaning of the Act, and who are members of the crew of any such ship as in sect. 7 of*

the Act, and to pilots when employed on any such ship, the following provisions shall have effect.

(2) *In the case of the death of a master, seaman, apprentice, or pilot the claim for compensation shall state the date at which news of the death was received by the claimant.*

(3) *The claim for compensation on behalf of dependants of a master, seaman, apprentice, or pilot lost with his ship, and the particulars appended or annexed to the request for arbitration, shall state the date at which the ship was lost or is deemed to have been lost.*

(4) *A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require.* (Forms 6 and 7, Appendix A.)

(5) *In any document, notice, or proceeding it shall be sufficient to describe "the owners of the ship "; and the provisions of the County Court Rules as to disclosure of the names of partners shall, with the necessary modifications, apply to the disclosure of the names of such owners.*

(6) *Subject to the provisions of paragraph (a) of sect. 7 of the Act as to service of the notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner or manager for the time being of the ship or (except where the master is claiming compensation) on the master of the ship; and sect. 696 of the Merchant Shipping Act, 1894, sub-sect. (1), shall apply to service on the master of the ship.*

Clause (c) of sub-sect. (1) of this sect. 7 provides for **injured seamen, &c. left abroad**, and for the taking of their evidence and its transmission and use at home.

(c) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if

so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such depositions or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly.

The sections 691 and 695 of the Merchant Shipping Act, 1894, referred to are as follows:—

Merchant Shipping Act, 1894, s. 691.

(1) *Whenever in the course of any legal proceeding instituted in any part of Her Majesty's dominions before any judge or magistrate, or before any person authorised by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject-matter of that proceeding, then upon due proof, if the proceeding is instituted in the United Kingdom, that the witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in that possession, any deposition that the witness may have previously made on oath in relation to the same subject-matter before any justice or magistrate in Her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence; provided that—*

(*a*) *if the deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom; and*

(*b*) *if the deposition was made in any possession, it shall not be admissible in any proceeding instituted in that British possession; and*

(*c*) *if the proceeding is criminal, it shall not be admissible, unless it was made in the presence of the person accused.*

(2) *A deposition so made shall be authenticated by the signature of the judge, magistrate, or consular officer before whom it is made; and the judge, magistrate, or consular officer shall certify, if the fact is so, that the accused was present at the taking thereof.*

(3) *It shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition, and in any criminal proceeding a certificate under this section shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified.*

(4) *Nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any Act of Parliament, or by any Act or ordinance of the Legislature of any colony, so far as regards that colony, or interfere with the power of the Colonial Legislature to make those depositions admissible in evidence, or to interfere with the practice of any Court in which depositions not authenticated as herein-before mentioned are admissible.*

Merchant Shipping Act, 1894, s. 695.

(1) *Where a document is by this Act declared to be admissible in evidence, such document shall, on its production from the proper custody, be admissible in evidence in any Court or before any person having by law or consent of parties authority to receive evidence, and subject to all just exceptions, shall be evidence of the matters stated therein in pursuance of this Act or by any officer in pursuance of his duties as such officer.*

(2) *A copy of any such document or extract therefrom shall also be so admissible in evidence if proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted, and that officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding 4d. for every folio of 90 words; but a person shall be entitled to have—*

(*a*) *a certified copy of the particulars entered by the registrar in the register book on the registry of the ship, together with a certified statement showing the ownership of the ship at the time being; and*

(*b*) *a certified copy of any declaration or document, a copy of which is made evidence by this Act,*

on payment of one shilling for each copy.

(3) *If any such officer wilfully certifies any document as being a true copy or extract knowing the same not to be a true copy or extract,*

he shall for each offence be guilty of a misdemeanour, and be liable on conviction to imprisonment for any term not exceeding 18 *months.*

(4) *Provisions for punishment of anyone guilty of forging, &c. any such document.*

Clauses (d) and (e) of sect. 7, sub-sect. (1), provide that where an **owner is liable under the Merchant Shipping Act, 1894**, he shall not be liable for the same matters under the Act.

(d) In the case of the death of a master, seaman, or apprentice, leaving no dependants, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial:

(e) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice.

By sect. 207 of the Merchant Shipping Act, 1894, the owner is made liable for certain expenses connected with the illness of seamen, &c. This section has already been amended by sect. 34 of the Merchant Shipping Act, 1906, and accordingly by the Interpretation Act, 1889 (*r*), it is by this latter Act we must determine the liability referred to.

The sections are not referred to by number, but the one intended seems clearly to be the following:—

34.—(1) *If the master of, or a seaman belonging to, a ship receives any hurt or injury in the service of the ship, or suffers from any illness (not being venereal disease, or an illness due to his own wilful act or default or to his own misbehaviour), the expense of providing the necessary surgical and medical advice and attendance and medicine,*

(*r*) Whether the Interpretation Act applies to an amending Act actually in existence when the amended Act is referred to and deliberately passed by is not decided. In this case there was no reason why the 1906 Act should not have been directly referred to.

and also the expenses of the maintenance of the master or seaman until he is cured, or dies, or is returned to a proper return port, *and of his conveyance to the port, and in the case of death the expense (if any) of his burial, shall be defrayed by the owner of the ship, without any deduction on that account from his wages.*

(2) *If the master or a seaman is on account of any illness temporarily removed from his ship, for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of the removal and of providing the necessary advice and attendance and medicine, and of his maintenance while away from the ship, shall be defrayed in like manner.*

(3) *The expense of all medicines, surgical and medical advice, and attendance given to a master or seaman whilst on board his ship shall be defrayed in like manner.*

(4) *In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman who dies whilst on service shall, if duly proved, be deducted from the wages of the seaman.*

And the "return port" referred to is defined as follows by sect. 45 of the same Act:—

45. *For the purpose of this part of this Act, either the port at which the seaman was shipped or a port in the country to which he belongs, or some other port agreed to by the seaman, in the case of a discharged seaman, at the time of his discharge, shall be deemed to be a proper return port.*

Provided that in the case of a seaman belonging to a British possession who has been shipped and discharged out of the United Kingdom, the proper officer may treat a port in the United Kingdom as a proper return port.

And by sect. 742 of the Merchant Shipping Act, 1894, "port" includes a place.

Clause (f) requires **compensation to be paid in full** to a seaman.

(f) Any sum payable by way of compensation by the owner of a ship under this Act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping

> Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this Act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury.

The result of this clause is that, whilst there is no limit to the amount of compensation an owner must pay, the amount of indemnity he can claim from employers and strangers is limited by sect. 503 of the Merchant Shipping Act, 1894, as follows:—

503.—(1) *The owners of a ship, British or foreign, shall not where all or any of the following occurrences take place without their actual fault or privity (that is to say),*

(*a*) *Where any loss of life or personal injury is caused to any person being carried in the ship;*

(*b*) *Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;*

(*c*) *Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;*

(*d*) *Where any loss or damage is caused to any other vessel, or to any goods, merchandise or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship;*

be liable to damages beyond the following amounts (that is to say),

(*i*) *In respect of loss of life or personal injury, either alone or together with loss of, or damage to, vessels, goods, merchandise or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and*

(*ii*) *In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.*

(2) Provides for the measurement of the tonnage of ships.

A further remark to be made on this clause is that it seems to contemplate others than owners being the employers as well might happen in case of chartering. It further seems to contemplate those cases where owners, not being employers, may yet seek an indemnity from the actual employers for compensation for which they are liable. Is the inference to be that owners, like principals, under sect. 4, are always to be liable, or will their liability, notwithstanding the ambiguity thus suggested, be limited to those cases where they are also the employers? The difficulty arises from the fact that the liability is imposed on employers by the Act, whilst this particular section deals with the liabilities of owners, and whilst not specifically making owners liable as owners, overlooks the fact that the owners and employers need not necessarily be the same people.

Detention of Ships.

11.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this Act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

This section, following the lines of the similar provisions in the Shipowners' Negligence (Remedies) Act, 1905 (*s*), was enacted to meet those cases where injured workmen had difficulties in finding proper parties from whom to obtain compensation. The effect of this section, as limited by sect. 7, is as follows:—

Sect. 11 is itself limited to (1) owners liable under this Act, and (2) those ships where none of the owners reside in the United Kingdom.

Sect. 7 only applies to those seamen, &c. who are (1) workmen, and (2) members of the crew of either (a) a registered ship, or (b), British ship, of which the owner, managing owner or manager resides in the United Kingdom.

The sect. 692 of the Merchant Shipping Act, 1894, referred to is as follows:—

DETENTION OF SHIP AND DISTRESS ON SHIP.

Merchant Shipping Act, 1894, s. 692.

692.—(1) *Where under this Act a ship is to be or may be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, or any officer of the Board of Trade, or any officer of*

(*s*) 5 Edw. 7, c. 10.

the customs, or any British consular officer may detain the ship, and if the ship after detention or after service on the master of any notice of or order for detention proceeds to sea before it is released by competent authority, the master of the ship, and also the owner, and any person who sends the ship to sea, if that owner or person is party or privy to the offence, shall be liable for each offence to a fine not exceeding one hundred pounds.

(2) *Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any officer authorised to detain the ship, or any surveyor or officer of the Board of Trade or any officer of customs, the owner and master of the ship shall each be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea, and also to a fine not exceeding one hundred pounds, or, if the offence is not prosecuted in a summary manner not exceeding ten pounds for every day until officer or surveyor returns, or until such time as would enable him after leaving the ship to return to the port from which he is taken, and the expenses ordered to be paid may be recovered in like manner as the fine.*

(3) *Where under this Act a ship is to be detained an officer of customs shall and where under this Act a ship may be detained an officer of customs may refuse to clear that ship outwards or to grant a transire to that ship.*

(4) *Where any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of customs the proper officer shall mean, unless the context otherwise requires, the officer able to grant a clearance or transire to such ship.*

The procedure for enforcing such detention is governed by the rules of practice as follows:—

COURT IN WHICH PROCEEDINGS ARE TO BE TAKEN.

Rule 73.—(2) *An application for an order for the detention of a ship may, subject to the provisions of the rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905 (t), be made to the judge of any court.*

(t) See explanatory memorandum issued by Rules Committee at end of this chapter.

(3) *Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security, pursuant to the Shipowners' Negligence (Remedies) Act, 1905, or sect. 11 of the Act, and Rules 37 and 38, such proceedings may be commenced—*

(i) *in the County Court of the district in which all the parties concerned reside; or*

(ii) *if the parties concerned reside in different districts,*

(a) *in the County Court of the district in which the accident occurred; or*

(b) *if the accident occurred at sea,*

(1) *in the County Court of the district in which the vessel is or was detained, or in which the order for detention was made or applied for; or*

(2) *in the County Court of the district in which the workman, or the dependants of the workman, or some or one of them, resides or reside;*

without prejudice to any transfer in manner provided by these rules.

Detention of Ships. (Sect. 11.)

37 (*u*).—(1) *An application for an order for the detention of a ship under sect. 11 of the Act shall be made in accordance with the rules for the time being in force under the Shipowners' Negligence (Remedies)*

(*u*) The following note was issued to these rules by the Rules Committee:—

Rule 37 provides for the detention of foreign ships under sect. 11. This clause is a repetition, as to the cases of compensation under the Act, of the Shipowners' Negligence (Remedies) Act, 1905 (5 Edw. 7. c. 10), which applies to cases of injuries caused by negligence. It is therefore suggested that applications should be made under the rules (if any) under that Act.

In fact, no such rules have yet been made, as great difficulties have arisen in the matter; but draft rules were settled by the County Court Rules Committee, and submitted to the Lord Chancellor, which were postponed pending the settlement of rules for the High Court. In these circumstances, Rule 37 proposes that applications for detention under sect. 11 shall be made in accordance with the rules in force under the Act of 1905, and subject thereto in accordance with the provisions of Rule 37, which follow the rules drafted for the County Courts as above mentioned, with the addition that notice of an application for detention shall be given where practicable, and that an undertaking by a solicitor to give security may be accepted, so as to avoid the necessity for detention. A copy of the memorandum accompanying the draft rules framed under the Act of 1905, showing the difficulties arising under that Act, is appended to this memorandum.

Act, 1905; *and those rules, with the necessary modifications, shall apply accordingly.*

(2) *Subject to any such rules as in the last preceding paragraph mentioned, an application for an order for detention shall be made in accordance with the following rules.*

(3) *The application may (subject to the provisions of para.* 8A *of this rule) be made* ex parte *either in or out of court, according to the form in the Appendix* (*r*), *and shall be supported by affidavit or other evidence showing, to the satisfaction of the judge, the grounds on which the application is made.*

[**Qy.** (4) *The judge may, before granting the application, require the applicant to give or procure an undertaking, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay* (*x*).]

(5) *An order for detention shall specify the amount for which security shall be given, and shall be according to the form in the Appendix* (*y*), *and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of the execution of the order apparently in charge of the ship, or, if there is no person apparently in charge, shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer.*

(6) *The judge may at any time, on good cause shown, rescind any order for detention made by him.*

(7) *The provisions of sections one hundred and eight and one hundred and nine of the County Courts Act*, 1888, *and of Order XXIX., as to security, shall, with the necessary modifications, apply to the giving of security; and the approval by the judge of any security shall be signified in writing signed by him. Where security is given by bond, such bond shall be according to the form in the Appendix* (*z*).

(*r*) Form 26, Appendix A.
(*x*) Form 27, Appendix A.
(*y*) Form 28, Appendix A.
(*z*) Form 29, Appendix A.

(8) *If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved or in any other case if the applicant so requires, the judge shall deliver to the party applying for the same an order according to the form in the Appendix (a), directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith.*

(8A).—(a) *With respect to any such application for an order for detention, and to undertakings to give security, the following provision shall have effect.*

(b) *Notwithstanding anything in this Act contained, no person intending to apply for an order for detention shall, if the name and address of an agent in England for the owners of the ship, or of a solicitor in England authorised to act for the owners, agent, master, or consignee of the ship, are known to him, give to such agent, owner, master, or consignee, by post, telegram, or otherwise, such notice of the time at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case.*

(c) *If a solicitor in England represents that he is authorised to act for the owners, agent, master, or consignee of any ship, and signs an undertaking according to the form in the Appendix to give security for an amount agreed on between the parties or fixed by the judge, then, such undertaking being filed in the Court*

(i) *the judge, in his discretion, may refuse to make an order for detention of the ship; or*

(ii) *if an order for detention has been made, but not executed, the judge may withdraw the order; or*

(iii) *if an order for detention has been executed, the judge may direct the person who has given an undertaking to release the ship.*

(d) *An undertaking given as aforesaid by any person in pursuance of this paragraph shall be deemed to cover the costs of the application for the order for detention as between solicitor and client.*

(e) *A solicitor who has given security in pursuance of this section may do so shall be liable to attachment.*

Form 30. (b) Form 30a.

(9) *Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security, the request for arbitration and particulars shall state concisely the circumstances under which the persons giving security are made respondents (c).*

(10) *Where proceedings are commenced in any court in England Scotland, or Ireland other than that in which the order for detention was made or applied for, the registrar of the court in which the order was made or applied for shall, on request, transmit by registered post to the registrar of the court in which the proceedings are commenced all original documents filed in the matter, and a certified copy of all records made with reference to the matter, and any bond by way of security given in the matter, and shall transfer to such last-mentioned court any money paid into court by way of security in the matter; and the provisions of Order [illegible], Rule 9 (d), as to the costs of copies and the costs of transmission shall apply to any transmission under this paragraph.*

(11) *The costs incurred by any party in relation to an application for an order of detention, and any proceedings consequent thereon, may in any subsequent proceedings by way of arbitration be allowed as costs of the arbitration.*

The provisions and rules of sects. 108 and 109 of the County Courts Act, 1888, and Order XXIX. are as follows:—

108. (e) *Where any party is required to give security, such security shall be at the cost of the party giving it, and in the form of a bond, with sureties, to the other party or intended party in the action or matter: Provided always that the court in which any action on the bond shall be brought may by order grant such relief to the obligors as may be just, and such order shall have the effect of a defeasance of such bond.*

109. *Where a party is required to give security, he may, in lieu thereof, deposit with the registrar, if the security is required to be given in the court, or with a Master of the Supreme Court if the security is required to be given in the High Court, a sum equal in amount to the sum for which he would be required to give security, together with a memorandum to be approved of by such registrar or master, and to be signed by such party, his solicitor, or agent, setting forth the conditions*

(c) See Form 8, Appendix. (d) See **Rule 75.**
(e) **Rule 37 (7).**

on which such money is deposited, and the registrar or master shall give to the party paying a written acknowledgment of such payment; and the judge of the County Court, when the money shall have been deposited in such court, or a judge of the High Court, when the money shall have been deposited in the High Court, may, on the same evidence as would be required to enforce or avoid such bond as in the last preceding section is mentioned, order such sum so deposited to be paid out to such party or parties as he shall think just.

Security.

Order XXIX., r. 1.—*Where a party proposes to give a bond by way of security, he shall serve, by post or otherwise, on the opposite party and upon the registrar, at his office, notice of the proposed sureties, according to the form in the Appendix; and the registrar shall forthwith give notice to both parties of the day and hour on which he proposes that the bond shall be executed, and shall state in the notice to the obligee that any valid objection which he may have to make to the sureties, or either of them, must be made on such day.*

2. *The sureties shall make an affidavit of their sufficiency according to the form in the Appendix, unless the opposite party dispenses with such affidavit.* (*Form* 236.)

3. *The bond shall be executed in the presence of the judge or registrar, or of a commissioner to administer oaths, or of a clerk to the registrar nominated to take affidavits.*

4. *Where a party makes a deposit of money, in lieu of giving a bond, he shall forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made.* (*See sect.* 109 *of the Act*, ante.)

5. *In all cases where the security is by bond the bond shall be given to the party or persons requiring the security, and shall be deposited with the registrar until the action is finally disposed of.*

6. *No registrar, deputy registrar, registrar's clerk, high bailiff, bailiff, broker, or other officer of the court, shall become surety in any case where by the practice of the court security is required.*

FORM 235.

Notice of Proposed Sureties.

TAKE NOTICE, that the sureties whom I propose as my security in the above action [*here state the proceeding which has rendered the sureties necessary*] are [*here state the full names and additions of the sureties, whether householders or freeholders, and their residences for the last six months, therein mentioning the county or city, places, streets, and numbers, if any*].

Dated this day of , 19 .

To the

FORM 236.

Affidavit of Justification.

I, , of , one of the sureties for the defendant, make oath and say:

1. That I am a householder [*or* freeholder, *as the case may be*], residing at [*describe particularly the county or city, the street or place, and the number of the house, if any*].

2. That I am worth property to the amount of £ [*the amount required by the practice of the court*] over and above what will pay my just debts [*if security in any other action or for any other purpose, add* and every other sum for which I am now security].

3. That I am not bail or security in any other action or proceeding or for any other person [*if security in any other action or actions, add* except for C. D., at the suit of E. F., in the Court of , in the sum of £ , for G. H., at the suit of J. K., in the Court of , in the sum of £ , *specifying the several actions, with the Courts in which they are brought and the sums in which he has become bound*].

4. That this my property, to the amount of the said sum of £ [*if security in any other action, &c., add* over and above all other sums for which I am now security as aforesaid], consists of [*here specify the nature and value of the property in respect of which the deponent proposes to become bondsman as follows:* stock-in-trade in my business of , carried on by me at , of the value of £ , good book debts owing to me to the amount of £ , of furniture in my house at of the value of £ , a freehold [*or* leasehold] farm of the value of £ , situate at , occupied by [*or* a dwelling-house of the value of £ , situate at , occupied by], [*or other property, particularizing each description of property, with the value thereof*].

5. That I have for the last six months resided at [*describing the place of such residence, or if he has had more than one residence during that period, state in the same manner as above directed*].

PROCEEDINGS WHERE EMPLOYER WHO HAS PAID COMPENSATION, OR FROM WHOM COMPENSATION IS CLAIMED, DESIRES TO OBTAIN ORDER FOR DETENTION OF SHIP. (5 Edw. 7, c. 10.)

(38). (*f*) *Where an employer who has paid compensation, or against whom a claim for compensation has been made under the Act, desires to make an application for the detention of a ship under the Shipowners' Negligence (Remedies) Act, 1905, the provisions of the last preceding rule shall apply, subject to the rules for the time being in force under the last-mentioned Act, and to the following modifications, viz.:*

(i) *An application for an order for detention, an order for detention, and a bond given by way of security, shall be according to the forms in the Appendix* (*g*).

(ii) *Where proceedings by way of arbitration for the recovery of compensation are taken against the employer, he may bring in the persons giving security as third parties in accordance with Rule* 24, *and the provisions of that rule shall apply accordingly* (*h*).

(iii) *Where such proceedings are taken against the employer in any court other than that in which the order for detention was made or applied for, and the employer brings in the persons giving security as third parties, the provisions of paras.* (10) *and* (11) *of the last preceding rule shall apply.*

(iv) *Where the employer has paid compensation in respect of the injury, all questions as to his right to indemnity against the persons giving security, and as to the amount of such indemnity, shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration, in accordance with the Act and these rules; and if such questions are settled by arbitration, the provisions of paras.* (9) *to* (11) *of the last preceding rule shall apply.*

(*f*) The following note was issued with these rules by the Rules Committee:—

Rule 38. *The Shipowners' Negligence (Remedies) Act*, 1905, *enables an employer who has paid compensation or has had a claim made on him under the Workmen's Compensation Act, and who claims to be indemnified by the owners of a foreign ship, to obtain an order of detention under that Act. The Workmen's Compensation Act does not contain a corresponding provision; but it is suggested that the rules should provide for applications for such orders, and Rule* 38 *so provides.*

(*g*) Forms 31, 32 and 33.

(*h*) Form 23, Appendix A.

THE SHIPOWNERS' NEGLIGENCE (REMEDIES) ACT, 1905 (5 EDW. 7, c. 10).

AN ACT to enlarge the Remedies of Persons injured by the Negligence of Shipowners.

1.—(1) *If it is alleged that the owners of any ship are liable to pay damages in respect of personal injuries, including fatal injuries, caused by the ship, or sustained on, in or about the ship, in any port or harbour in the United Kingdom, in consequence of the wrongful act, neglect or default of the owners of the ship, or the master or officers or crew thereof, or any other person in the employment of the owners of the ship, or of any defect in the ship or its apparel or equipment, and at any time that ship is found in any port or river of England or Ireland or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him, by any person applying in accordance with rules of court, that the owners are probably liable to pay damages in respect of such injuries, and that none of the owners reside in the United Kingdom, issue an order, directed to any officer of customs or other officer named by the judge, requiring him to detain the ship until such time as the owners, agent, master or consignee thereof have made satisfaction in respect of the injuries, or have given security to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of the injuries, and to pay all costs and damages that may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.*

(2) *In any legal proceeding in relation to such injuries as aforesaid, the person giving security shall be made defendant, and shall be stated to be the owner of the ship which has caused the injuries, or on, in or about which the injuries were sustained, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceedings.*

(3) *Section six hundred and ninety-two of the Merchant Shipping Act*, 1894, *shall apply to the detention of a ship under this Act as it applies to the detention of a ship under that Act, and the expressions*

"port" and "harbour" have the same meaning as in that Act, and, if the owner of a ship is a corporation it shall, for the purposes of this Act, be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

(4) *The words "person applying" in this section shall include an employer who has paid compensation, or against whom a claim for compensation has been made, under the Workmen's Compensation Act, 1897, as amended by any subsequent enactment, if he shows the judge that he probably is or will become entitled to be indemnified under that Act, and in such case this section shall apply as if the employer were a person claiming damages in respect of personal injuries.*

MEMORANDUM AS TO PROPOSED COUNTY COURT RULES UNDER THE MERCHANT SHIPPING ACT, 1894, SECT. 688, AND THE SHIPOWNERS' NEGLIGENCE (REMEDIES) ACT, 1905.

These Rules have been drafted under the Merchant Shipping Act, 1894, sect. 688, and the Shipowners' Negligence (Remedies) Act, 1905.

The first of these enactments empowers the Judge of any Court of Record in the United Kingdom, and in Scotland the Court of Session and also the sheriff of the county within whose jurisdiction the ship may be, on summary application made to him, to issue an order for the detention of a foreign ship which has caused injury to property of His Majesty or any subject of His Majesty, on that ship being found in any port or river of the United Kingdom, or within three miles of the coast thereof, and its being shown that the injury was probably caused by the misconduct or want of skill of the master or mariners; the ship to be detained until satisfaction is made for the injury, or security given to abide the result of any legal proceeding instituted in respect thereof.

The Act of 1905 gives a similar power of detention on its being alleged that the owners of any ship are liable to pay damages in respect of personal or fatal injuries caused by or sustained on, in or about the ship in any port or harbour of the United Kingdom in consequence of the wrongful act, &c. of the owners, master, officers, or crew, or any other person in the employment of the owners, or any defect in the ship or its apparel or equipment, on the ship being found in any port or river in England or Ireland or within three miles of the coast thereof, and its being shown on application made in accordance with Rules of Court that the owners are probably liable to pay damages, and that none of them reside in the United Kingdom.

It will be observed—

1. That the first enactment applies to Scotland, while the second, though referring to injuries caused in any port or harbour of the United Kingdom, gives the power of detention only if the ship is found in England or Ireland, and to the Courts in England or Ireland.
2. That under the first enactment the application may be made summarily, while under the second it is to be in accordance with Rules of Court.

If any Rules are necessary, it would seem to be desirable that they should proceed as far as possible on the same lines in the various Courts having jurisdiction; and the accompanying draft Rules, though limited to the County Courts in England, are submitted for consideration by those by whom Rules for other Courts would be framed.

The following points arise for consideration:—

1. By what Courts exercising jurisdiction in limited areas should the power of detention be exercised?

The words are very general—viz., "any Court of Record in the United Kingdom" in the first enactment, and "any Court of Record in England or Ireland" in the second.

Taken literally, these words would seem to empower a Court with limited jurisdiction to order the detention of a vessel beyond the limits of its jurisdiction.

Is this intended? The words in the first enactment, limiting the jurisdiction of the sheriff in Scotland to the sheriff within whose jurisdiction the ship may be, seem to indicate that local Courts should act only within the limits of their local jurisdiction.

As the words of the Acts are general, it is suggested that no definition of the Court by which the power of detention may be exercised should be attempted by rule.

2. Should an undertaking as to damages be required, either (a) as a matter of course, or (b) at the discretion of the Judge?

On interlocutory applications for injunctions it is usual to require such an undertaking, and the detention of a ship is a serious thing, which might involve the owners in heavy loss; it is therefore suggested that the Judge should have power to require an undertaking as to damages to be given by a responsible person.

3. Paragraph 4, as to service, is founded on the County Court Rules as to the execution of warrants of arrest in Admiralty actions.
4. Paragraph 5. It is submitted that a power to rescind an order should be given.
5. Paragraph 6 relates to security.
6. Paragraph 7, as to release, is founded on the County Court Rules as to releases in Admiralty.

[*Note.*—These are paragraphs 5 to 8 in Rule 37.]

The Acts require security *to be approved by the Judge*, and provide that the party giving security shall be made defendant in any legal proceeding, and that the production of the order of the Judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

It would seem, therefore, that the security must be approved by the Judge personally, and that he cannot delegate the power of approval to the registrar. If this is so, serious delay may occur in cases where the Judge who makes the order is moving about his circuit from day to day. It is therefore suggested that the order of detention should specify the amount for which security is to be given, in which case the release of the ship may be expedited by paying that amount into Court. If, on the other hand, security is given by bond, it would seem that the security must be approved by the Judge.

The draft Rule applies the provisions of the County Courts Act and Rules as to security, and provides a form of bond similar to that prescribed in Admiralty actions in the High Court and the County Court.

The question seems to be worthy of consideration whether the Rules of the High Court as to the entry of caveats against the issue of warrants

of arrest (R. S. C. Order XXIX., Rules 11—18) might not be made applicable to the entry of caveats against the issue of orders of detention, and made applicable to all Courts, by a rule of the Supreme Court providing that the notice to be filed under Rule 12 should contain an undertaking to enter an appearance in any action instituted in any competent Court in England in respect of the injury, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or to pay such amount into the Court in which such action may be commenced.

If this were done, the County Court Rules might provide that the applicant for an order of detention should as[illegible]y telegraph or otherwise, and inform the Judge, whether or not an[illegible] caveat had been entered in the Principal Registry of the Admiralty Di[illegible]n against the issue of an order of detention; and if it appeared that such a caveat had been entered, it might be made obligatory on the Judge to require an undertaking as to damages before issuing an order of detention.

It might further be provided that the Judge might accept a duplicate of the notice filed on the entry of the caveat as sufficient security.

And it might further be provided that where such duplicate was accepted as security, and an action was commenced in a County Court in respect of the injury, the party entering the caveat should within three days from the service of the summons give bail or pay money into Court, and on failure to do so should not be entitled to defend except by leave of the Judge and on such terms as he might think fit; and that if judgment was given for the plaintiff without bail having been given or money paid into Court, payment might be enforced by attachment against the party on whose behalf the caveat was entered, without prejudice to the right of the plaintiff, in the event of the judgment remaining unsatisfied, to apply for a fresh order of detention if the ship should thereafter be found in any port or river of England, or within three miles of the coast thereof.

February, 1906.

PART III.

CHAPTER XIII.

Procedure Special to the Act.

The procedure under the Act is to be by arbitration, in accordance with Schedule II. and the rules made by its authority (*a*) for carrying its provisions into effect. Both, more or less, cover the same ground, and must therefore be carefully studied together, but if, in a few rare instances, there should be disagreement, the schedule must prevail.

Subject to modifications thus made, the ordinary practice of the County Courts is to be in force (*b*).

For this the practitioner is referred to the admirable County Courts Practice annually published.

The provisions of Schedule II. we will now consider, giving in antique type the more important rules to be read with them, and the rules, *in extenso*, follow immediately after the schedule.

By sect. 1, sub-sect. (3), of the Act it is enacted—

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(*a*) Sched. II., para. (12).
(*b*) Rules 27 and 80.

SECOND SCHEDULE.

Arbitration, &c.

(1) For the purpose of settling any matter which under this Act is to be settled by arbitration, if any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as herein-after provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim (*c*), the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the Lord Chancellor so authorises, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this Act, have all the powers of that judge.

These paragraphs may be thus epitomised. By para. (1) arbitration is to be by a committee representative of master and workmen. By para. (2), failing such committee, the parties, by consent, may appoint an arbitrator, and, if they cannot agree, the

(*c*) The word "claim" refers to the claim for compensation, not the initiation of arbitration proceedings (see Article VII.); and six months by sect[illegible] of the Interpretation Act, 1889, means six calendar months.

matter shall be settled by the judge of the County Court, or para. (3) by some arbitrator appointed by him.

As regards such committee and arbitrator appointed by the parties, in issuing the rules under the similar paragraph of the Schedule to the old Act, the then Rules Committee stated:—"It is apprehended that the Rules Committee have no power to make rules as to the procedure before a committee or an arbitrator agreed upon by the parties; but paras. (4), (6), (7), (9), (14), and (15) of Schedule II. appear to apply to such arbitrator as well as to one appointed by the judge."

Briefly, the paragraphs referred to and the rules prescribing the procedure under them are as follows:—

Para. (4) provides for such committee or arbitrator stating a case on any doubtful point of law. As to how far they or he can be compelled to so state a case, see *infra*, p. 319. See also **Rules 71, 72.**

Para. (6), as to parties being represented at arbitrations. See **Rule 33.**

Para. (7), as to costs. **Rules 61—66.**

Para. (9) provides for the record in the County Court of matters decided. **Rules 41—48.**

Para. (14) requires payment of compensation to be either into court or on the receipt of the party to whom it is payable, and also deals with costs to be paid solicitors and their lien for same. See also **Rules 65** and **66.**

Para. (15) gives power to a committee or arbitrator to obtain the report of a medical referee. See **Rules 41 (2), 53, 61 (5).**

Further,

Para. (8), Schedule II., provides that in the case of the death, &c. of such arbitrator, the judge of the County Court may appoint a new arbitrator in his place. See **Rule 40.**

And para. (16), Schedule II., empowers the Secretary of State to confer on such committees or arbitrator all the powers of a County Court judge, and by 14 & 15 Vict. c. 99, s. 16, an arbitrator may examine witnesses on oath.

The result of these paragraphs is that practically such committees and arbitrators can (as was intended) act as informally as

they please. On the other hand, the practice before the judge of the County Court, or arbitrator appointed by him, is definitely settled (*d*).

As to judge appointed arbitrator. **Rules 29, 31, 32, 40.**
parties to arbitration generally. **Rules 2—4, 6, 7, 16.**
in case of seamen. **Rule 36.**
As to dependants, their rights *inter se*, &c., Schedule I., para. (8). **Rules 4, 5.**
As to application for arbitration by applicants and respondents, and particulars to be furnished. **Rules 8—12.**
As to answer by respondent. **Rule 17.**
submission to award by respondents. **Rule 18.**
third parties under sect. 4. **Rules 19—23.**
under sect. 6. **Rule 24.**
in other cases. **Rules 25, 26.**
burden of proof. **Rule 27 (2).**
in case of industrial diseases. **Rule 39.**
costs. **Rules 61—66.**

For an instructive summary of usual steps taken in arbitration proceedings, see Form 67, and also Draft Bill of Costs, Appendix B.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but a *committee* or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court (*e*), and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, *or where he gives any decision or makes any order under this Act*, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme

(*d*) In all matters left to the discretion of the judge he is bound to exercise his discretion, and may not lay down a general rule of practice which he means to follow. *Webster* v. *Sharp*, (1904) 1 K. B. 218.

(*e*) **Rule 32.** *Gibson* v. *Wormald*, (1904) 2 K. B. 40.

Court either party appeals to the Court of Appeal (*f*): and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court (*g*).

This paragraph might well have been made into three or more, the matters it deals with being distinct and all of them important.

Particularly is this so with regard to the added words printed in italics, the effect of which in governing appeals is by no means clear.

The Arbitration Act, 1889.

The operation of this Act is here expressly negatived. In common with proceedings under that Act, and as one of the incidents of the procedure being by arbitration, the arbitrator has no power to grant a new trial (*h*), though by **Rule 28** (2) he may rectify clerical slips or such-like errors, and by **Rule 70** provision is made for setting aside awards or orders improperly obtained. This rule is so consonant with good sense and justice and the need for it so obvious that the possibility of its being *ultra vires* need not be seriously considered. This is not the same as provisions for review.

Where there has been since the award a change of circumstance he may review the award, but this review is not merely to be of the nature of a re-hearing (*i*). In no way does such review operate as a new trial. As far as the original case and original facts are concerned, the matter is *res judicata*. (See Part II. Chap. X.)

As to application under this paragraph. **Rule 48.**

(*f*) **Rules 34. 71.** and **72.**
(*g*) **Rules 27, 80.**
(*h*) *Mountain* v. *Parr*, (1899) 1 Q. B. 805.
(*i*) *Crossfield* v. *Tanian*, 82 L. T. 815.

Submit any Question of Law.

This section also provi for appeals (*k*). Appeals from an arbitrator appointed by the arties or by the judge will be by way of case stated to the judge There is a duty on the arbitrator to so state a case for the jud e. The permission *may state a case* is more or less imperative, as nabling words are always compulsory when they are words to effe uate a legal right (*m*). But he must be asked before making his award. In *Gibson* v. *Wormald* (*n*) the arbitrator not having been asked to state a case during the hearing declined to do so afterwards, considering he was *functus officio* and had no power, and from this decision it was held there was no appeal to the Court of Appeal.

The procedure to be adopted in case an arbitrator appointed by the parties refuses to state a case on being asked to do so is not yet settled. Probably it would be wise in the first instance to apply to the judge of the County Court for his assistance, and in the meanwhile, as a precautionary measure, to withdraw one's submission to arbitration.

Questions of Law.

This paragraph provides for appeal on questions of law only (*o*). On questions of fact the finding of an arbitrator, as of a jury, is final. But this is on the supposition there is evidence—legal evidence—in support of such facts (*p*), and what is legal evidence is a matter of law. Further, though the finding of facts may be final, the conclusion in law to be deduced from them is not.

For instance, a man died from anthrax. Was his death caused by accident or was it not. This would entirely depend on the meaning to be given to the word "accident" (*q*). The County Court judge could find the facts, he could find the death and the cause of death—viz., anthrax; but his conclusion that such death

(*k*) **Rules 32, 71, 72.**

(*l*) *Pumpherston Oil Co., Ltd.* v. *Cavaney*, 40 S. L. R. 466.

(*m*) *Julius* v. *Bishop of Oxford*, 5 A. C. 214.

(*n*) (1904) 2 K. B. 40.

(*o*) *Smith* v. *L. & Y. R.*, (1899) 1 Q. B. 141.

(*p*) *Johnson* v. *Marshall*, (1906) A. C. 409; *Fenn* v. *Miller*, (1900) 1 Q. B., Collins, L.J., p. 792.

(*q*) *Fenton* v. *Thorley*, (1903) A. C. 443.

was or was not a death from accident would not be a finding of fact but a conclusion in law, and, as such, the subject of appeal. If he stated a special case it would take the form—"If the word 'accident' is to have such-and-such a meaning attributed to it, I find for the applicant; if not, otherwise" (*r*).

Again, a judge must have some evidence of the facts he finds. If there is no evidence, that is, no legal or admissible evidence—for illegal or inadmissible evidence in the eyes of the law is the same as no evidence—he can arrive at no decision. As what is evidence or admissible as evidence is a question of law, and often a very complicated one, the Court of Appeal can entertain such question, and inquire, Was there any admissible evidence on which he could found his decision? (*s*) If there was—and theoretically (*t*) the amount or degree of such evidence is immaterial—they will not interfere with his finding; but if they decide there was not, they will set it aside, and their power to do so under this para. (4) has never been questioned (*u*). A case of more difficulty is where there has been some evidence, but at the same time the judge has been obviously influenced by other evidence which was not admissible. Can an appeal be then entertained? Such difficulty is bound to arise frequently in the near future when the judges adjudicate on the weekly average earnings under Schedule II., para. (2) (a), and take the evidence of what was being earned by certain persons as there specified. There cannot help but be times when the admissibility of such evidence must be doubtful, and the question is, Can the judge's decision on such point be appealed from when, apart from such evidence, there is other evidence in support of his finding of fact?

The question whether such evidence, or similar evidence, was admissible would undoubtedly be a question of law, and, as such, a matter for appeal. But would the decision carry the matter further? Would the Court hold that, there being some evidence, they were still bound by his finding, or, rather, that they ought to

(*r*) In *Brintons* v. *Turvey*, death from anthrax was held to be death from accident. (1905) A. C. 230.

(*s*) *Johnson* v. *Marshall*, *supra*.

(*t*) Practically, see *Brooker* v. *Warren*, 23 T. L. R. 201.

(*u*) *Chandler* v. *Smith*, (1899) 2 Q. B. 506.

inquire whether his finding would have been the same irrespective of such evidence?

It seems the latter view would be more consonant with the furtherance of justice, and, therefore, on the whole, it would seem that appeals on the wrongful admission of evidence could be correctly made. If this is so, the logical result would also follow that the wrongful rejection of evidence would also be the subject of appeal. Of course, these cases are quite different from where there is a conflict of evidence. It is no ground of appeal that the decision was against the weight of evidence. "It is not *ad rem* to say that the finding was, on the balance of evidence, a wrong one, and that the judge ought, upon the evidence, to have come to a different conclusion of fact" (*r*). One must go further and say there was no evidence, though possibly it may be enough to prove the judge was influenced by matters which were not evidence, and that therefore his decision was not correct.

No doubt the right of appeal is the safety of our judicial system, and the tendency is to enlarge, not restrict, such right, and as an example of such tendency and of the foregoing remarks, we cannot do better than instance the recent case of *Brooker* v. *Warren* (*s*). Here a workman was engaged at a circular saw. Under certain conditions this saw had a tendency to catch the log being sawn, and to hurl it, like a bolt from a catapult, across the factory. To prevent this a guard was provided. The factory inspector told the man to use this guard, his master told him to use it, and his fellow-workmen complained when he did not. Notwithstanding, he deliberately would not do so. He did not believe in it, and he preferred working without it. Then it happened that the wood got caught and thrown, as we have mentioned. He was in front of it at the time, and was struck by it and mortally injured. The County Court judge found his act was wilful, but not serious, misconduct. There was some evidence to support his view. Amongst other matters, the employer knew he was not being obeyed, but as the man was his friend as well as his workman, he did not peremptorily insist

(*r*) Collins, M.R., in *Kenny* v. *Harris* 1902 2 K. B. at p. 172.
(*s*) 23 T. L. R. 201.

on his orders being carried out. Under such circumstances, was the not carrying out such order not merely misconduct but serious misconduct?

The Court of Appeal hardly pretended there was no evidence on which the County Court judge could find it was not, but simply disagreed with him, and reversed his decision on the ground that, in their opinion, the misconduct was not only wilful but most serious as well. Undoubtedly, those who read the case in full will feel the Court of Appeal acted very rightly in the course they took, and if there was not a theoretical right of appeal there ought to have been.

But whilst it would seem the right of appeal is considerably larger than at first sight would appear, yet let practitioners never forget that judges who have neither seen the witnesses nor heard the evidence always pay the greatest deference to the opinion of the judge who has had this advantage. In the heat of conflict we may sometimes think the judge will not take our point from pure objection to ourselves. As a matter of fact, it is the pride of our race that we have not a single judge administering our law but whose one desire is to do what is just between man and man. Hence the weight his findings have with those who have to reconsider his conclusions in law.

Court of Appeal.

The right to appeal is given by this para. (4). This paragraph is the same as under the old Act, save that the words in italics have been added.

Formerly the words governing such appeal were, "*and in any case where he himself settles the matter under this Act.*" Now they are, "*and in any case where he himself settles the matter under this Act or when he gives any decision or makes any order under this Act.*"

Under the old Act, after numerous decisions, one did know at last to which Court to appeal. Now it is all unsettled. Few things are more wearisome than weighing the effect of words which, after all, are only to settle what judges are to hear a cause. However, nothing is more irritating than to be dismissed for want of juris-

diction (no first case ought to be so dismissed, and would not be but for the pedantic adherence to unnecessary formalism), and so we will consider the subject far more lengthily than the merits deserve.

We will first state what we take the law to be, apart from the added words, as found in the old decisions. This will enable each practitioner to take some of the responsibility of deciding how far it ought to be modified by such words.

Ordinarily appeals from the County Court, by sect. 120 of the County Courts Act, 1888, are to a Divisional Court, but in arbitrations under this Act are to be direct to the Court of Appeal.

As to procedure prescribed. **Rule 71.**

When the judge decides matters connected with such arbitrations as judge, and not as arbitrator, the appeal will still be to the Divisional Court. The dividing line between his functions as arbitrator and judge seems clearly to be the making of the award. When it is made the arbitration is at an end (*y*). The award, if faulty, may be questioned, but not matters outside it. Interlocutory and other proceedings leading up to the award as preliminary to and part of the arbitration are subject to appeal to the Court of Appeal (*z*), but matters subsequent to it form part of the ordinary County Court procedure, and, as such, if appealed against, must be taken to the Divisional Court (*a*).

This was so decided as regards the registering of the memorandum and enforcing it. Now, by virtue of the added words, probably any decision or order as to such registration would have to be appealed from to the Court of Appeal, whilst there does not seem to be any reason why there should be any change when the enforcing it is alone in question. Again, under sect. 5 (1) of the old Act, where a workman wanted to enforce his award against the insurers of his employers, and they disputed liability, it was held an appeal as to such liability was wrongly taken to the Court of Appeal, as the matter was one the judge of the County Court

(*y*) *Rigby* v. *Cox*, (1904) 1 K. B. 358.

(*z*) *Osborn* v. *Vickers Maxim*, (1900) 2 Q. B. 91.

(*a*) *Bailey* v. *Plant*, (1901) 1 Q. B. 31, C. A.; *Bailey* v. *Plant*, 17 T. L. R. 119, Div. Ct.

had cognizance of as judge and not as arbitrator (*b*). Though this is now changed by sect. 5 (1) of the present Act, questions between applicants and insurers being now probably brought within the Act, it might equally be held to come within the words, "gives any decision or makes any order under this Act." It is difficult to say for certain what the procedure should be in a case like that of *Rex* v. *Owen* (*c*), when the judge of the County Court held he had no jurisdiction in an English Court to entertain an arbitration against a Scotch employer. The mandamus to compel him was asked for and granted by a Divisional Court. Could a decision by a judge that he had no jurisdiction under this Act be held a decision under this Act? Whichever Court a practitioner first tries, he will have the pleasure of hearing forcible arguments why he should have tried the other.

So there have been a number of cases on costs. These the Court of Appeal have steadily refused to hear on the ground they were outside the award.

It will be noticed the added words are not very different from the former ones. *Settles the matter under this Act, gives any decision under this Act, or makes an order under this Act*, have a certain similarity, and do not seem to suggest any fundamental difference in the principle of appealing, and if a question of costs arising out of a matter settled under this Act was outside the award, it would equally seem a question of costs arising out of a decision under this Act or an order under this Act might similarly be excluded. Therefore it seems that possibly the following decisions may be followed to some extent.

In *Welland* v. *G. W. Rly. Co.* (*d*), on a matter of costs, the judge refused to exercise powers it was asserted he possessed. As the matter came before the Court of Appeal in the form of asking them to compel him to use such powers, they decided such application should have been made to the Divisional Court under sect. 131 of the County Courts Act, 1888 (*e*).

(*b*) *Leech* v. *Life, &c. Insurance Assoc.*, (1901) 1 Q. B. 707, followed in *Kniveton* v. *Northern, &c. Co.*, 86 L. T. 721.

(*c*) (1902) 2 K. B. 436.

(*d*) 16 T. L. R. 297.

(*e*) See also *Rex* v. *Owen*, (1902) 2 K. B. 136.

Keene v. *Nash* (*f*) was a similar case. There a plaintiff, having failed in an action under the Employers' Liability Act, 1880, asked for compensation to be assessed under sect. 1 (4) of the Act. This was done. On taxation the registrar allowed the defendants their costs at 22*l.*, then taxed the plaintiff's costs of assessing compensation on a hypothetical bill at 15*l.*, and set off one set of costs against the other. The plaintiff objected to all the defendant's costs being allowed, and applied to the County Court judge to order a review of the taxation. On his refusing they appealed to the Court of Appeal. The Court, following their decision in *Leech* v. *Life, &c. Insurance Association*, dismissed the appeal on the preliminary objection that no appeal lay to them from the refusal of a County Court judge to direct a review of taxation, and that it was a matter quite outside the appellate jurisdiction of the Court under the Act.

The question again came before the Court of Appeal in *Rigby* v. *Cox* (No. 1) (*g*). Here an application to review compensation had been made, and failed. On taxation of costs the registrar followed the general rule of the judge, that all such costs were to be taxed as on interlocutory proceedings. On appeal being made to the judge to order a review of such taxation, on the ground such general rule was bad (*h*), and his refusing to make such order, the workman appealed to the Court of Appeal. This appeal the Court dismissed on the ground they could not distinguish it from their former ruling in *Keene* v. *Nash* (*i*). The appellants tried to distinguish the case on the ground *Keene* v. *Nash* involved a question of taxation of costs under the Employers' Liability Act, 1880. This, no doubt, would have been a good argument for sustaining the decision, apart from the one given, but still an additional reason did not make bad the one given by the Court of Appeal. Virtually the appeal was on a question of costs, which was subsequent to the award and outside their appellate jurisdiction under the Act.

(*f*) 88 L. T. 796.

(*g*) (1901) 1 K. B. 358.

(*h*) Ultimately so held by the Divisional Court in *Rigby* v. *Cox* (No. 2), (1904) 2 K. B. 208, as the judge must exercise his discretion in every case.

(*i*) 88 L. T. 790.

Appeals under Sect. 1 (4).

Complicated questions as to appeal arise under sect. 1 (4). In these cases the matter originally comes before the judge, whether of the High Court or County Court, as judge and not as arbitrator. Is the character of the Court changed when the judge proceeds or refuses to assess compensation under this sub-section? Does he act as judge or arbitrator? The subject is of so much importance and the authorities so difficult as to demand a little fuller consideration.

The words of sect. 1 (4) of the Act are—

(1) If within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceedings under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act (*k*).

On reading this sub-section through, at first glance it would appear to fall within and be governed by the very broad provision of sect. 1, sub-sect. 3), which requires every question

(*k*) For form of certificate see Rule 51 and appendix A, Form 44.

arising under the Act to be settled by arbitration, and therefore by an arbitrator. The section in full is as follows:—

(3) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the person injured is a workman to whom this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

But on more carefully examining it it will be seen that this sub-section only deals with *any proceedings under this Act*, whilst sub-sect. (4) as expressly deals with an action brought independently of this Act. If the effect of this latter sub-section is that after the action is dismissed the compensation is to be assessed as a proceeding under this Act, then certainly this sub-sect. (3) will apply. But sub-sect. (4) does not so say, and to argue that proceedings are to be under the Act, and therefore this sub-sect. (3) applies, and because sub-sect. (3) applies therefore the proceedings are under the Act, is to argue in a circle. Therefore, sub-sect. (3) in itself throws no light on whether the assessment of compensation under sub-sect. (4) is a proceeding under the Act or no; but by the very words of this sub-section the determination of liability is to be made before the action is dismissed, that is, though by proceedings under this Act, yet by proceedings, not in an arbitration, but in the action.

Again is the point settled by this para. 4 which we are now discussing. This states "*the decision of the Judge on any question of fact either on such submission or in any case* where he himself settles the matter under this Act, or when he gives any decision or makes any order under this Act *shall be final and . . . either party may appeal to the Court of Appeal.*"

As there is no power to either inquire into the liability to pay compensation, or to assess such compensation, in an action apart from this Act, proceedings to do so will certainly be under this

Act, and *primâ facie* bring such matter within the scope of this para. (4). The only doubt is whether this paragraph is not solely limited to decisions and orders in arbitrations. What provision is there made for any other matters getting before a County Court judge at all? Hence, again, this paragraph does not help us much, certainly not decisively. If the proceedings to assess compensation are proceedings in an arbitration, this paragraph will certainly apply. But are they proceedings in an arbitration? The determining the liability to pay compensation is expressly made a step in the action, it having to be done before the action is dismissed.

Therefore it would be a strange result if the Legislature intended the question of liability to be decided in the action, but the question of amount in arbitration proceedings. If any weight is to be given to the argument *ab inconvenientiâ*, it would seem better the matter should be regarded as an action from beginning to end. Then all questions arising can be disposed of in the same appeal. If otherwise, we may find one part of the judgment of a County Court judge the subject of appeal to the Court of Appeal and the other to a Divisional Court. For instance, suppose a case brought under the Employers' Liability Act, 1880. The judge may hold there is no case under it and non-suit, and then, on being asked to assess compensation under this sect. 1 (4), may decide the plaintiff is not within the provisions of the Act. Then, according to this latter hypothesis, the appeal on the non-suit will have to be to the Divisional Court, and on the latter decision to the Court of Appeal. And these very facts occurred in the case of *Isaacson* v. *New Grand, &c.* (*l*). In this case, unfortunately, the point we are now discussing was not decided, as on a new trial under the Employers' Liability Act, 1880, being ordered by the Divisional Court, the proceedings in the Court of Appeal were in the meantime stayed, so staying being decided to be the correct practice to adopt. But the question is, Ought there to have been any proceedings in the Court of Appeal to have been stayed? If the judge acted as judge from beginning to end, the whole appeal ought to have been

(*l*) [1903] 1 K. B. 539.

to the Divisional Court. Here we must leave the question. It is so difficult that no doubt the ultimate decision will be governed by the particular facts in a particular case.

Security for Costs.

As to giving security for the costs of appeal, the practice is governed by Ord. LVIII., rule 15, of the High Court Rules, and is the same as in the other cases, viz.:—"Whenever the respondent could show that the appellant was a person from whom the respondent would be unable to get the costs of the appeal if unsuccessful, the Court will order security for the costs of the appeal" (*m*). The amount fixed is usually 15*l.* (*m*).

The fact that the case is being run by a trade union will not affect the rule even if they have paid the costs below (*n*), but an exception may be made if the poverty of the applicant has been caused by the accident, the subject of the appeal (*o*); or if the County Court judge himself, by staying execution, suggests the desirability of appealing (*p*). The attempt to evade the rule by making an application for a new trial, security not being required in such applications, was not successful, as the Court regarded the application as an ordinary appeal (*q*), and now the rule as to new trials is the same as in appeals, and security will be ordered (*r*).

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

And the appointment and remuneration of such referees are provided for by sect. 10 of the Act as follows:—

10.—(1) The Secretary of State may appoint such legally qualified medical practitioners to be medical

(*m*) Smith, L.J., in *Hall* v. *Snowden*, (1899) 1 Q. B. 593; and *Rees* v. *Richards*, Times, August 8th, 1899; *Shea* v. *Drolenaux*, 88 L. T. 679.

(*n*) *Haddock* v. *Humphrey*, Times, August 1st, 1899.

(*o*) *Skeggs* v. *Keen*, Times, May 16th, 1899; *Rourke* v. *White Moss Colliery Co.*, 2 C. P. D. 205, as explained by *Farrar* v. *Lacy, &c.*, 28 C. D. 482.

(*p*) *Hubball* v. *Everitt*, 16 T. L. R. 168.

(*q*) *Harwood* v. *Abrahams*, (1901) 2 K. B. 304.

(*r*) *Wightwick* v. *Pope*, (1902) 2 K. B. 99.

referees for the purposes of this Act as he may, with the sanction of the Treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this Act shall, subject to regulations made by the Treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the Second Schedule to this Act shall be paid out of moneys provided by Parliament in accordance with regulations made by the Treasury.

As to summoning medical referee under Schedule II., para. (5). **Rule 52.**

appointing medical referee to report under Schedule II., para. (15). **Rule 53.**

reference under Schedule I., para. (15). **Rule 54.**

refusal to submit to examination. **Rule 55.**

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person (*s*).

This paragraph apparently applies to any arbitrator or committee, and not only to judges and judge appointed arbitrators. **Rule 33.**

As to parties to arbitration generally. **Rules 2—7, 16.**

And as to application for medical or burial expenses. **Rule 6.**

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county

(*s*) **Rules 33—78.**

court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules(*t*), and such taxation may be reviewed by the judge of the county court.

Practically under this section the discretion of the arbitrator is unfettered, and he should consider all circumstances and offers to avoid proceedings. **Rule 61 (3)**. He may refuse all costs to a successful applicant, as in *Skeggs* v. *Keen* (*u*); he may give a small lump sum, such as 5*l.*, as in *Welland* v. *G. W. Rly.* (*x*), or, on the other hand, he may give full costs to an applicant who has brought an action unsuccessfully and has asked for compensation under sect. 1 (4) of the Act (*y*), or he may order two sets of costs to be taxed, one in the action and the other for assessing compensation, and set one off against the other (*z*). So, particularly by **Rule 48 (e)**, this discretion also applies to proceedings for recording memorandums or rectifying the register. Similarly it applies to particular items, such as counsel's fees, usually allowed when there is any difficult matter to be considered (*a*).

Whilst costs and other matters are in the discretion of the arbitrator, yet he must exercise his discretion in every case, nor may he lay down any general rule to fetter his own discretion in the future. Should he do so such rule would be the subject of appeal (*b*). Thus, where a judge made it a rule that all applications to "renew" compensation should be taxed as interlocutory proceedings, it was held such rule was bad (*c*). It might be perfectly right for him in every case to so decide, but he could not give his decision in one case on a rule based on facts in another. Whilst costs are in the discretion of the judge as regards third

(*t*) **Rules 18 (5), (6) and (7), 33 (2)—34**, and **61—66**.
(*u*) Times, June 19th, 1899.
(*x*) 16 T. L. R. 297.
(*y*) *Cattermole* v. *Atlantic Transport Co.*, (1902) 1 K. B. 204.
(*z*) *Keene* v. *Nash*, 88 L. T. 790.
(*a*) *Coleman* v. *S. E. Rly.*, Times, February 28th, 1899.
(*b*) *Rigby* v. *Cox* (No. 2), (1904) 2 K. B. 208.
(*c*) *Ibid.*

parties, his powers are limited by para. (19), Schedule I., and he may not order them to be set off or charged, &c. against weekly payments (*d*).

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

This, however, does not prevent one set of costs being set off against another, *e.g.*, the costs of assessing compensation against the costs of an unsuccessful appeal (*e*).

As to the costs of an applicant's own solicitor, these are dealt with in para. (14) of this schedule, *infra*.

General provisions as to costs. **Rule 61.**
Offers of compensation to be considered. **Rule 61 (3).**
Taxation of costs awarded by committee or arbitrator appointed by the parties. **Rule 62.**
Review of taxation by judge. **Rule 63.**
Solicitor's authority to receive costs. **Rule 64.**
Costs under Schedule II., para. (14). **Rule 65.**
Payment and lien, &c. **Rule 66.**
Costs when submission to award. **Rule 18 (5) (d), (6), and (7).**
Costs between third parties and others. **Rules 23, 24 (4), (6) (c).**
Costs of special case. **Rule 32 (7).**
Costs of detention of ship. **Rule 37 (11).**
Industrial diseases. **Rule 39 (4) (d).**
Costs appointing arbitrator under Schedule II., para. (8). **Rule 40 (9).**
Reference to judge of agreement under Schedule II., para. (9), proviso (d). **Rule 49 (8).**
Application for medical referee, costs of. **Rule 54 (9), (10).**

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court

(*d*) *Rosewell Gas Coal Co.* v. *M'Vicar*, 7 F. 290.

(*e*) *Case* v. *Colonial Wharves*, 53 W. R. 514, C. A.

may, on the application of any party, appoint a new arbitrator.

Formerly the practice was to apply to the judge of the High Court at chambers. This seems the better procedure of the two, as it enables the same County Court judge to keep seisin of the whole case.

As to arbitrator appointed by judge. **Rule 29** (e).
the parties. **Rule** 40.

(9) Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court (*f*), by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register (*g*) without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment (*h*).

Provided that—

(a) no memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the

(*f*) **Rules 41—47.** (*g*) **Rule 81.** (*h*) **Rules 67—69.**

recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(c) the judge of the county court may at any time rectify the register (*i*); and

(d) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just (*k*); and

(e) the judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependants, has been recorded in the register, order that the record be removed from

(*i*) **Rule 48.**

(*k*) Reducing to statutory enactment what has become the practice. *Cressan* v. *Caledon, &c. Co.* (1906), H. L. (S. C.).

> the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

We have seen Article XIII.; there may be cases where the respondents may say they have admitted the claim of the applicant and there is no subject-matter for arbitration.

In this case, the procedure for the applicant is to apply to have a memorandum of the agreement recorded under this paragraph, even if such agreement were verbal only (*l*). So also with all awards of informal arbitrators. Subject to the discretion given to the judge by the above proviso (b), according to the decisions on the old Act, which, no doubt, will afford some guide to the practice under this, there is no time within which a memorandum must be registered, nor is this right affected by a change of circumstances which make it no longer applicable (*m*). The only question is, Is the memorandum genuine? But the agreement itself must have been come to whilst the right to compensation was in existence, and an applicant is not entitled to a nominal award to preserve rights in case of supervening incapacity (*n*).

Equally, when in *Powell* v. *Main Colliery Co.* (*o*) it was held that a claim was the initiation of proceedings, it was also held that the respondent could likewise commence and carry on arbitration proceedings, and similarly he is entitled to have a memorandum of agreement registered.

When so recorded, this memorandum will practically have all the incidents of a County Court judgment, being conclusive of what is stated in it, and being enforceable in all respects as a County Court judgment, by execution, judgment summons, or otherwise.

(*l*) *Jones* v. *Gt. Central Rly. Co.*, 18 T. L. R. 65.

(*m*) *Blake* v. *M. Rly.*, (1904) 1 K. B. 503; *Keeling* v. *Eastwood* (1904), 116 L. T. Journ. 595.

(*n*) *Husband* v. *Campbell*, 5 F. 1146.

(*o*) (1900) A. C. 366.

This was finally decided by the much-appealed case of *Bailey* v. *Plant* (*p*), and **Rules 67 — 69** now carry this into effect. Whilst definitely applying the proceedings under the Debtors Act, 1869, s. 5, to the Act, it at the same time provides that the Court shall not alter the terms of future payments prescribed by the award otherwise than by consent.

In the same case it was held that the award itself was the best memorandum thereof, and no objection could be taken that it, and not the memorandum, had been sent to the registrar. It will be noted that in the case of alleged agreements the paragraph provides for the registrar being satisfied as to the correctness of that proposed to be registered.

Similarly, the certificate given under sect. 1 (4) is to have the effect of an award, and to be regarded as a memorandum (*q*).

But whilst a memorandum when duly recorded can be thus enforced, yet to be enforced it must be so recorded (*r*). Nor can it be subsequently recorded so as to include arrears, and such arrears cannot be recovered under the Act (*s*). (Query, Could they not be sued for by action on contract in usual way?)

For an interesting summary of usual steps in arbitration proceedings, see Form 67, an example of the register to be kept under this section.

As to discovery to enforce memorandum against insurers. **Rule 35.**
award and correcting slips in it. **Rule 28 (2).**
record of admitted memorandum. **Rules 41—44.**
procedure if disputed. **Rules 46, 47.**
proceedings for rectification. **Rule 48.**
reference to judge. **Rule 49.**
application to remove memorandum. **Rule 50.**
certificate under sect. 1, sub-sect. (4). **Rule 51.**
enforcing award. Execution. **Rule 67.**
Debtors Act. **Rule 68.**
Other proceedings. **Rule 69.**
setting aside award. **Rule 70.**

(*p*) 109 L. T. 254, C. C.; (1901) 1 Q. B. 31, C. A.; 17 T. L. R. 119, Div. Ct.
(*q*) **Rule 51.**
(*r*) *Cochrane* v. *Traill*, (1900) 2 F. 794.
(*s*) *Colville* v. *Tigue*, (1905) 8 F. 179.

As to appeal from award. **Rules 71, 72.**
jurisdiction. **Rule 73.**
transfer of proceedings. **Rule 75.**
filing and serving documents. **Rule 77.**

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependants, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

This paragraph makes it equally important for employers entering into agreements with infants, dependants or persons under a disability, or for the redemption of weekly payments by a lump sum (Schedule I. (17)), to have a memorandum of such agreement properly recorded, as, failing such record, he will not be discharged from his liability.

It will be noted that, even when a memorandum is so recorded, it will not in itself be a discharge as against persons not included in it, and who may have rights not covered by it. If an employer has the slightest doubt as to whom to pay it to, he had better pay the money into court (**Rule 18**), and leave to it the distribution amongst those entitled.

As to recording memorandum, see para. (**9**), *supra*.

(11) Where any matter under this Act is to be done in a County Court, or by, to, or before the judge or registrar of a County Court, then, unless the contrary

intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the County Court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer (*t*) in manner provided by rules of court.

Where respondents in Ireland. See *Haddock* v. *Fisher* (*u*), but now by *Rex* v. [illegible], *C. C. Newport* (*x*), this paragraph includes all respondents within United Kingdom, and service may be by registered letter. See also *Rex* v. *Owen*, (1902) 2 K. B. 436.

As to court in which proceedings are to be taken. **Rule 73.**
stay of proceedings when several applications for arbitration. **Rule 16.**
transfer of proceedings. **Rule 75.**
proceedings subsequent to award (*e.g.*, execution) in a court other than that in which award was made. **Rule 74.**
service and substituted service. **Rules 15, 77 and 78.**

(12) The duty of a judge of County Courts under this Act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the County Court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the County Court, or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator (*y*), and such rules may, in England, be made by the five judges of County Courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by

(*t*) **Rule 75.**
(*u*) Times, May 7, 1900.
(*x*) 87 L. T. 298.
(*y*) **Rule 1.**

the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

Rules must not be inconsistent with the Act, but subject thereto have statutory effect.

The rules are intended to apply, as far as possible, the procedure in County Court actions to arbitrations under the Act with such modifications as seem to be necessary.

As to procedure generally. **Rule 27.**

Anything not covered by special rules to follow practice in County Court as far as possible. **Rule 80.**

(13) No court fee, except such as may be prescribed under paragraph (15) of the First Schedule to this Act, shall be payable by any party in respect of any proceedings by or against a workman under this Act in the court prior to the award.

The Treasury order, dated Feb. 22nd, 1901, provides for fees subsequent to award. See Annual County Court Practice.

(14) Any sum awarded as compensation shall unless paid into court under this Act be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this Act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this Act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the County Court, on an application made either by the person claiming compensation or by his solicitor or agent, to determine the amount of costs (*z*) to be paid to the solicitor or agent, such sum to be

(*z*) **Rules 61—66.**

awarded subject to taxation and to the scale of costs prescribed by rules of court.

See also para. (19), Schedule I., as to amount awarded not being capable of being assigned, charged, attached, or liable to set off; and para. (7), Schedule II., as to costs generally: and para. (9), Schedule I., as to record of memorandum.

In case of the death of the person to whom compensation is payable after claim made, but before award given, the right to such compensation is vested and the benefit of such right passes to the estate of such person. (*Darlington* v. *Roscoe* (1906), 23 T L. R. 167.) If no claim has been made there is no such right, and those interested in the estate of such person cannot institute proceedings on behalf of such estate. (*O'Donovan* v. *Cameron* (1901), 2 Ir. 633.) If this decision wants justifying, it is that compensation is not given on account of the wrongful act or contractual duty of a respondent but as a gift, to save certain specified persons from want and not to swell their estate for the benefit of people not within the purview of the Act. But a claim once made an award theoretically dates back to such claim, and the Courts cannot go into questions of how long or how short a time a person would live to benefit by the compensation awarded.

As to disputes between applicants *inter se*. **Rule 5.**
money to be paid into court. **Rules 56, 59.**
applicant going abroad. **Rule 60 (13).**
costs. **Rules 65, 66.**

(15) Any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration (*a*).

As to copy of report to be annexed to memorandum. **Rule 41 (2).**
workman to submit himself to examination. **Rule 53 (2).**
costs under this paragraph to be costs in arbitration. **Rule 61 (5).**

(*a*) These regulations and forms under same follow the rules.

(16) The Secretary of State may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this Act exclusively on County Courts or judges of County Courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisoes (d) and (e) of paragraph (9) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the Secretary of State to be necessary or proper for the purposes of the order.

(17) In the application of this schedule to Scotland—

(a) "County Court judgment" as used in paragraph (9) of this schedule means a recorded decree arbitral:

(b) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him,

and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords:

(c) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this schedule to Ireland the expression "judge of the County Court" shall include the recorder of any city or town, and an appeal shall lie from the Court of Appeal to the House of Lords.

STATUTORY RULES AND ORDERS, 1907.

No. 433.
L.11.

THE WORKMEN'S C[illegible]MPENSATION RULES, 1907.

RULE

PRELIMINARY.

1. Effect, &c. of Rules.
2. Parties.
3. Joinder of parties.
4. Dependants.
5. [illegible] rights *inter se*.
6. Parties in case of death.
7. Parties representing similar interests, or test actions.

APPLICATION FOR ARBITRATION.

8, 9. Request for arbitration and particulars of claim and form of same.
10. Application by employer.
11. Copies of particulars for judge and respondents.
12. Application by illiterates.

PROCEEDINGS ON ARBITRATION BEFORE JUDGE.

13. Fixing day and place for arbitration.
14. Notice of day fixed
15. Service on respondents.
16. Stay of proceedings.
17. Answer by respondent.
18. Submission to award or payment into Court by respondent. And as to costs incurred.
19–23. Notice to parties against whom indemnity is claimed under sect. 1.
24. Notice as to indemnity claimed under sect. 6 or otherwise.
25. Third party procedure when employer is applicant.
26. Claim to indemnity as between respondents.
27. Procedure on arbitration, and (2) as to burden of proof.
28. Award, and correction of clerical error in it.

PROCEEDINGS BEFORE ARBITRATOR APPOINTED BY JUDGE.

29. Appointment of arbitrator by judge.
30. Fixing day for arbitration.
31. Procedure before arbitrator.
(2) (b) Awards to be enforced, &c. by judge.
32. Submission of question of law by committee or arbitrator to judge.
(7) Costs of special case.

RULE

33. Appearance of parties in arbitration.
34. Duty of judge as to taking notes.
35. Proceedings against insurers under sect. 5.
36. Masters, seamen, apprentices and pilots. Sect. 7.
37. Detention of ships. Sect. 11.
38. Detention of ship by employer as against third parties.
39. Industrial diseases. Sect. 8. Schedule III.
40. Appointment of arbitrator by judge in place of arbitrator agreed on by the parties under Schedule II., para. (8).

MEMORANDUM UNDER SCHEDULE II., PARA. (9).

41. Memorandum to be sent to registrar.
42. Authentication of memorandum.
43. Notice of memorandum to other parties.
44. Recording memorandum. When admitted.
45. When disputed.
46. Notice of dispute.
47. Subsequent proceedings.
48. Proceedings for record of memorandum or rectification of register.
49. Reference to judge. Schedule II., para. (9), proviso (d).
50. Application for removal from register of memorandum of agreement. Schedule II., para. (9), proviso (e).

51. Certificate of award under sect. 1, sub-sect. (4).

52. Summoning medical referee as assessor under Schedule II., para. (5).
53. Appointment of medical referee to report. Schedule II., para. (15).
54. Application for reference to medical referee under Schedule I., para. (15).
55. Suspension of proceedings or weekly payments on refusal to submit to examination under Schedule I., paras. (4), (14), or (15).
56. Payment into Court and investment and application of money payable in case of death. Schedule I., para. (5).
57. Payment into Court and investment and application of weekly payments payable to person under legal disability. Schedule I., para. (7).
58. Application for variation of order under Schedule I., para. (9).
59. Investment and application of lump sum paid in redemption of weekly payment. Schedule I., para. (17).
60. Proceedings where workman receiving weekly payments intends to cease to reside in United Kingdom. Schedule I., para. (18).

COSTS.

61. (1) To be taxed according to scale applicable if proceedings had been in County Court.
(2) On what amount.
(3) Offers of compensation to be considered.
62. Costs given by arbitrator or committee to be taxed.
63. Review of taxation by judge.
64. Rights of solicitor as to taking costs out of Court.
65. Costs of solicitor or agent under Schedule II., para. (14).
66. Provisions as to solicitor's lien on compensation awarded.

RULE

67. Execution.
68. Proceedings under Debtors Act, 1869, sect. 5.
69. Other proceedings to enforce award, memorandum, or certificate.

70. Setting aside award or order improperly obtained.
71. Appeals.
72. Procedure on judgment of Court of Appeal.

73. In what Court proceedings may be taken.
74. Proceedings in one Court on matters recorded in another.
75. Transfer of proceedings.
76. Transfer of money paid into Court.
77. Filing and service of documents and notices.
78. Procedure generally.
79. where Crown a party.
80. Anything not provided for to be governed by procedure in County Court.
81. Record of proceedings.
82. References to medical referees.
83. Matters, how distinguished.
84. Forms.

CORRESPONDING NUMBERS OF RULES UNDER THIS ACT AND UNDER THE OLD ACT.

Under— New Act.	Old Act.	Under— New Act.	Old Act.	Under— New Act.	Old Act.
1	1	27	24	51	48
2	2	53	25	67	49
3	3	82	—	68	49a
4	4	28	26	69	49b
5	5	29	27	55	50
6	6	30	28	35	51 to 58
7	7	31	29	56	59
8	8	82	30	74	60
8 (3)	9	*Omitted*	31	75	61
9	10	33	32	77	62
10 (1)	10a	61	33	78	63
11	11	62	34	80	64
12	12	64	34a	81	65
13	13	34	35	83	66
14	14	71	36	84	67
15	15	72	37		
16	16	41	38		
17	17				
18	18	47	44		
19	19	48	45		
		65	46		
26	23	66	47		

STATUTORY RULES AND ORDERS, 1907.

No. 433 / L.11.

MASTER AND SERVANT.

WORKMEN'S COMPENSATION ACT, 1906.

THE WORKMEN'S COMPENSATION RULES, 1907.

[Dated the First day of June, 1907.

Former rules, how far annulled.

6 Edw. 7, c. 58.

THE Workmen's Compensation Rules, 1898, the Workmen's Compensation Rules, 1899, and the Workmen's Compensation Rules, 1900, are hereby annulled, but shall continue to apply to cases where the accident happened before the commencement of the Workmen's Compensation Act, 1906, except so far as the provisions of that Act and of these Rules relating to references to medical referees and proceedings consequential thereon apply to those cases.

PRELIMINARY

Effect, short title, commencement, and construction of Rules. 6 Edw. 7, c. 58.

1.—(1.) The following Rules shall have effect under the Workmen's Compensation Act, 1906 (in these Rules referred to as the Act), with reference to any matter or proceeding for the regulation of which Rules of Court may be made under the Act, and generally for carrying the Act into effect so far as it affects the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator.

(2.) These Rules may be cited as the Workmen's Compensation Rules, 1907, and shall come into operation on the first day of July one thousand nine hundred and seven; but they shall not, except so far as they relate to references to medical referees and proceedings consequential thereon, apply to any case where the accident happened before the commencement of the Act.

(3.) Expressions used in these Rules shall have the same meaning as the same expressions used in the Act.

52 & 53 Vict. c. 63.

(4.) The Interpretation Act, 1889, shall apply for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

(5.) These Rules shall also be read and construed with the County Court Rules, 1903, and the County Court Rules of subsequent date amending the same, and any Order and Rule referred to by number in these Rules shall mean the Order and Rule so numbered in the County Court Rules, 1903, or in any County Court Rules of subsequent date, as the case may be. [*Substituted for Rule 1 under old Act.*]

Parties to Arbitration before Judge or Arbitrator appointed by Judge.

Parties to arbitration. [*Conf.* Order XIV., Rule 2.]

2.—(1.) When application is made for the settlement by the judge, or by an arbitrator appointed by the judge, of any matter which under the Act is to be settled by arbitration, the party making such application shall be called "the applicant"; and, subject to these Rules, all other persons whose presence at the arbitration may be necessary to enable the judge or arbitrator effectively and completely to adjudicate upon and settle all the questions involved shall be made parties to the application, and shall be called "the respondents." [*Old Rule* 2.]

[*Conf.* Order III., Rule 2.]

(2.) In any case in which both the principal as defined by the Act and a contractor with him are alleged to be liable to pay compensation under the Act, Order III., Rule 2, as to joinder of parties, shall apply. [*Old Rule* 2.]

Order III., Rule 2.

All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

Joinder of applicants. Order III., Rule 1. Order XLIV., Rules 18, 19.

3. More persons than one may be joined as applicants in one arbitration, in any case in which such persons might be joined in one action as plaintiffs under Order III., Rule 1; and that Rule, and Rules 18 and 19 of Order XLIV., shall, with the necessary modifications, apply to any such arbitration. [*Old Rule* 3.]

Parties.

Generally.

Order III., Rule 1.

All persons may be joined as plaintiffs in one action in whom any right to any relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate actions, any common question of law or fact would arise: Provided that if upon the application of any defendant it appears that such joinder may embarrass or delay the trial, the judge may order separate trials, or make such other order as may be expedient. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who is not found entitled to relief, unless the Court, in disposing of the costs of the action, otherwise directs.

Order XLIV., Rule 18

Where two or more persons are joined as plaintiffs under Order III., Rule 1, and the negligence, act, or omission which is the cause of action is

proved, the judgment shall be for all the plaintiffs; but the amount of the sum awarded for damages and the costs ordered to be paid to each plaintiff shall be found and set forth separately in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person and in such manner as the judge may think fit.

Rule 19. If the defendant fails to pay the several amounts of compensation and the costs awarded in the action execution against his goods may issue as in an ordinary action, and if the proceeds of the execution are insufficient, after deducting all costs to pay the whole of the amounts awarded, such proceeds shall, after the deduction of all the costs of the action as aforesaid, be apportioned between the several plaintiffs in proportion to the amounts awarded to them respectively.

Application by dependants. [*Conf.* 9 & 10 Vict. c. 93, 27 & 28 Vict. c. 95.]

4.—(1.) An application on behalf of the dependants of a deceased workman for the settlement by arbitration of the amount payable as compensation to such dependants may be made by the legal personal representative (if any) of the deceased workman on behalf of such dependants, or by the dependants themselves; and in either case the particulars to be filed as hereinafter mentioned shall contain particulars as to the dependants on whose behalf the application is made.

This Rule 4 (1) is an improvement on the similar Rule under the old Act. By this Rule application *may* (not shall, as under old Rule) be made by the legal personal representative, or by the dependants themselves, so that practically anyone interested can institute proceedings, and no difficulty as to the payment of the compensation arises, as by Schedule I., para. (5), it is expressly directed that in case of death the payment must be made into Court.

(2.) Provided, that if there is any conflict of interest between the dependants themselves, or if any dependants neglect or refuse to join in an application, the application may be made by or on behalf of some only of such dependants, the other dependants in either case being named as respondents.

A father initiated and dropped proceedings. The mother then applied and did not join the father. Held, father not being joiner, not a fatal objection. (*Bevan* v. *Crawshay*, 18 T. L. R. 17.)

(3.) In the construction of this Rule the term "dependants" shall include persons who claim or may be entitled to claim to be dependants, but as to whose claim to rank as dependants any question arises. [*Old Rule* 4.]

Application by dependants under Act, Sched. 1, pt. a. 8, where amount of compensation agreed or ascertained.

5.—(1.) In any case in which the amount payable as compensation to the dependants of a deceased workman has been agreed upon or ascertained, but any question arises as to who are dependants, or as to the amount payable to each dependant, an application for the settlement of such question by arbitration may be made either by the legal personal representative (if any) of the

deceased workman on behalf of the dependants or any of them, or by such dependants or any of them, against the other dependants, and the persons claiming or who may be entitled to claim to be dependants, but as to whose claim to rank as such a question arises; or such application may be made by the persons claiming to be dependants, but as to whose claim to rank as such a question arises, or any of them, against the legal personal representative (if any) of the deceased workman, and the dependants, and such of the persons claiming or who may be entitled to claim to be dependants as are not applicants.

(2.) In any such case, if the employer has paid the agreed or ascertained amount of compensation, it shall not be necessary to make him a respondent, but if such compensation or any part thereof is still in his hands he shall be made a respondent.

(3.) The employer, if made a respondent, may pay the amount of compensation in his hands into Court, to be dealt with as the judge or arbitrator shall direct, and thereupon further proceedings against him shall be stayed. [*Old Rule* 5.]

An employer is not entitled to require letters of administration to be taken out. (*Chatworthy* v. *Green*, 86 L. T. 702.) Under the present Rule he can make himself safe by paying money into Court.

Parties to arbitration as to sum payable for medical attendance and burial. Act, Sched. 1, para. 1 (a) (iii).

6.—(1.) An application for the settlement by arbitration of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants shall be made by the legal personal representative (if any) of the deceased workman. If there is no such legal personal representative, the application may be made by any person to whom any such expenses are due. In the latter case any other person known to the applicant as a person to whom any such expenses are due shall be joined in the application either as applicant or respondent.

Apportionment of such sum.

(2.) In any case in which application is made for the settlement by arbitration of such amount, the amount awarded, if insufficient for the payment of such expenses in full, shall be apportioned between the persons to whom such expenses are due in such manner as the judge or arbitrator shall direct. [*Old Rule* 6.]

Parties under disability and partners; representation of parties having the same interest. [Order III., Rules 7, 8, &c.]

7. The provisions of Rules 7 and 8 of Order III., as to persons suing or defending on behalf of other persons having the same interest, and the provisions of the County Court Rules as to persons under disability and partners suing and being sued, shall, with the necessary modifications, apply to proceedings by way of arbitration under the Act. [*Old Rule* 7.]

Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be

Order III., Rule 7.

authorised by the Court, before or at the trial, to defend in such action or matter, on behalf or for the benefit of all parties so interested.

Order III., Rule 8.

When a defendant desires to defend on behalf or for the benefit of others having the same interest he shall, within two clear days of the date of service of the summons on him, give notice to the plaintiff of his intention to apply, upon a day and hour to be named in such notice, to the Court for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons; and the Court may thereupon make an order for the defendant so to defend, and the names of the persons as to whom such order is made shall be added to that of the defendant in the plaint and minute-book; and a copy of such order, with a copy of the summons and particulars in the action, and a notice according to the form in the Appendix shall be personally served on each of such persons, and notice shall be sent to the plaintiff according to the form in the Appendix: Provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the judge may thereupon, if he thinks fit, strike the names of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he may think fit.

PERSONS UNDER DISABILITY.

10. Infants may sue as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose; but nothing herein contained shall affect the right of any infant to sue as if he were of full age in the cases enumerated in section ninety-six of the Act.

[Sect. 96 empowers minors to themselves sue for wages up to 100*l.*]

11. Married women may sue and be sued as provided by the Married Women's Property Act, 1882.

[As to general law of married women, see valuable note in Yearly County Court Practice, 1907, p. 207; or the Annual County Court Practice, p. 112 *et seq.*]

12. In cases in which before the first day of November, 1875, lunatics or persons of unsound mind, not so found by inquisition, might respectively have sued as plaintiffs or would have been liable to be sued as defendants in any action, they may respectively sue as plaintiffs in any action by their committees or next friends according to the practice of the Chancery Division of the High Court, and may in like manner defend any action by their committees or guardians appointed for that purpose.

13. In any action or matter to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure given by the next friend, guardian, committee, or other person acting on behalf of the person under disability shall, with the consent of the Court, have the same force and effect as if such party were under no disability and had given such consent: Provided that no such consent by any

committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in lunacy.

PARTNERS.

14. Any two or more persons claiming or being liable as co-partners, and carrying on business within England and Wales, may sue or be sued in the names of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and in any such case, on application by any party to the action, the Court may order a statement of the names and places of residence of the persons who were at the time of the accruing of the cause of action co-partners in any such firm to be furnished in such manner and verified on oath or otherwise as the Court may direct.

15. Where an action is brought by partners in the name of their firm, the plaintiffs shall on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the judge may direct, or the judge at the trial may adjourn the hearing on such terms as he may think fit. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the summons. But all the proceedings shall, nevertheless, continue in the name of the firm.

16. The provisions of these Rules as to actions by or against firms shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within England or Wales; but no execution shall be issued in any such action without leave of the judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made, and directions given, as may be just.

17. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and so far as the nature of the case will permit, all the provisions of these Rules relating to proceedings against firms shall apply.

16. Where an infant desires to commence an action (other than for wages or piece-work, or for work as a servant), or is a claimant in an interpleader proceeding, he shall sue by a next friend, and the Christian name and surname, description, and residence or place of business of the next friend shall be stated in the præcipe; and such next friend shall, at the time of entering the plaint or delivering the particulars of the goods and chattels alleged to be the property of the infant, either attend at the office of the registrar and give an undertaking, according to the form in the Appendix (Form 15), to be responsible for costs, or transmit such an undertaking to the registrar: and if such undertaking is not given at the office of the registrar, it shall be attested by a solicitor, or by a clerk to a registrar nominated to take affidavits. Order V. Rule 16.

The plaint shall not be entered or the particulars received until such undertaking has been given, and on entering into such undertaking the next friend shall be liable in the same manner and to the same extent as if he were himself the plaintiff; and the action or interpleader proceeding shall proceed in the name of the infant by such next friend, and the undertaking shall be filed by the registrar; but no order of the Court shall be necessary for the appointment of such next friend. If the infant fails in or discontinues his action or proceeding, and does not pay the amount of costs ordered to be paid by him to the defendant, proceedings may be taken for the recovery of such amount from the next friend as for the recovery of a judgment debt.

UNDERTAKING BY NEXT FRIEND OF INFANT TO BE RESPONSIBLE FOR DEFENDANT'S COSTS.

I, the undersigned E. F., of , being the next friend of A. B., who is an infant, and who is desirous of entering a plaint in this Court against C. D., of, &c., hereby undertake to be responsible for the costs of the said C. D. in such action in the manner following: namely, if the said A. B. fail to pay the said C. D., when and in such manner as the Court shall order, all such costs of such action as the Court shall direct him to pay to the said C. D. I will forthwith pay the same to the registrar of the Court.

Dated this day of , 19 .

APPLICATION FOR ARBITRATION.

Request for arbitration.

8.—(1.) An application for the settlement of any matter by arbitration shall not be made unless and until some question has arisen between the parties, and such question has not been settled by agreement. [*New.*]

This Rule has been drafted so as to give effect to the decision in *Field* v. *Longden*, L. R. (1902) 1 K. B. 47, and (1) states that arbitration is not to be requested unless a question has arisen; (2) requires the question to be stated in the request. The question must be a real question (*Jones* v. *Great Central Railway*, 4 W. C. C. 23), and an employer must be given a fair opportunity of admitting or disputing liability (*Caledon, &c. Company* v. *Kennedy* (1906), 43 Sc. L. R. 430, 637).

(2.) Where any question has arisen and has not been settled by agreement, an application for the settlement of the matter by arbitration shall be made by the applicant filing with the registrar a request for arbitration, intituled in the matter of the Act and in the matter of the arbitration, which request shall state concisely the question which has arisen, and shall, with the subsequent proceedings thereon, be recorded in the special register hereinafter mentioned. [*Old Rule* 8.]

(3.) Particulars shall be appended or annexed to the request, containing— Particulars.

(a) a concise statement of the circumstances under which the application is made, and the relief or order which the applicant claims;

(b) the date of service of notice of the accident on the employer, or, if such notice has not been served, the reason for such omission; and

(c) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor. [*Old Rule* 9.]

9.—(1.) The request and particulars shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require. Forms of request and particulars. Forms 1 to 11.

(2.) A copy of the notice of the accident shall be appended or annexed to the particulars. If this Rule cannot be complied with, the reason for the omission shall be stated in the particulars. [*Old Rule* 10.]

10.—(1.) Where an employer on whom a claim for compensation has been made desires to make an application for the settlement of any matter by arbitration, he shall file a request for arbitration in accordance with Rule 8, to which the workman, or the legal personal representative (if any) and the persons claiming or who may be entitled to claim to be dependants of a deceased workman, or the other persons (as the case may be) on whose behalf the claim was made, shall be respondents. Application by employer.

(2.) Particulars shall be appended or annexed to the request, containing—

(a) a concise statement of the circumstances under which the application is made;

(b) a statement whether the applicant admits his liability to pay compensation, or denies such liability, wholly or partially, with (in the latter case) a statement of the grounds on and extent to which he denies liability;

(c) a statement of the matters which the applicant desires to have settled by arbitration; and

(d) the full names and addresses of the respondents and of the applicant, and of his solicitor, if the proceedings are commenced through a solicitor. [*Rule* 10*a*, *Rule* 1, *Nov.*, 1900.]

Copies for judge and respondents.

11. The applicant shall deliver to the registrar with the request and particulars a copy thereof for the judge or arbitrator, and a copy for each respondent to be served. [*Old Rule* 11.]

Where applicant is illiterate.

12. Where the applicant is illiterate and unable to furnish the required information in writing, the request and particulars and copies shall be filled up by the registrar's clerk. [*Old Rule* 12.]

Proceedings on Arbitration before Judge.

Fixing Day and Place for Arbitration.

Fixing day and place for arbitration.

13.—(1.) On the filing of a request for arbitration, the registrar shall transmit a copy of the request and particulars to the judge, who shall as soon as conveniently may be (if he decides to settle the matter himself) appoint a day and hour for proceeding with the arbitration. Such days shall be so fixed as to allow the copies of the request and particulars to be served on the respondents at least twenty clear days before the day so fixed.

(2.) The arbitration shall, subject as hereinafter mentioned, be held at the place at which the court is held.

(3.) Provided, that the judge may direct that the arbitration shall be held at any other place within the district of the court, on application in that behalf made by any party to the arbitration, and on such party filing an undertaking to provide at his own expense a place to the satisfaction of the judge in which the arbitration may be held, and to pay the necessary expenses of the judge and officers of the court attending at such place.

(4.) If such direction is given before the notices mentioned in the next following Rule are issued, the registrar shall insert in such notices the place at which the arbitration has been so directed to be held.

(5.) If such direction is given after such notices have been issued, the registrar shall forthwith send notice by post to the parties of the place at which the arbitration has been so directed to be held. [*Old Rule* 13; *amended by Rule* 1, *Sept.*, 1899.]

Notice of Day Fixed.

Notice to parties.

14.—(1.) On the day for proceeding with an arbitration being fixed, the registrar shall give or send by post notice in writing to the applicant, stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and shall issue the copies of the request and particulars, under the seal of the court, for service on the respondents, together with notices

Forms 12, 13. signed by the registrar himself, and under the seal of the court,

stating the place at which and the day and hour on and at which the arbitration will be proceeded with, and that if the respondents do not attend in person or by their solicitors such order will be made and proceedings taken as the judge may think just and expedient. [*Old Rule* 14.]

(2.) Where the request is filed by an employer, the notices to be served on the respondents shall be modified by the omission of the words therein relating to the denial or admission of liability to pay compensation. [*Rule* 2, *Nov.*, 1900.] Notice where employer is applicant. Form 13.

Service on Respondents.

15.—(1.) The copies and notices mentioned in the last preceding Rule shall be served on the respondents at least *twenty clear days* before the day fixed for proceeding with the arbitration. Service on respondents.

This is to allow sufficient time for proceedings between service and hearing, especially third party proceedings. See Rules 19—26.

(2.) The copies and notices mentioned in the last preceding Rule may be served—

(a) by a bailiff of a court;

or, at the request of the applicant or his solicitor,

(b) by the applicant, or some clerk or servant in his permanent and exclusive employ; or

(c) by the applicant's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them, or some person employed by either of them to serve such copies and notices, who might be so employed to serve a writ in an action in the High Court.

(3.) Service may be effected either in accordance with the Rules as to service of default summonses, or by registered post in accordance with the provisions of sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury, and the provisions of those sub-sections shall apply to such service. Act, sect. 2, sub-sects. 3, 4.

(4.) Where service is effected otherwise than by a bailiff, a copy of the document served, with the date and mode of service indorsed thereon, shall within three clear days next after the date of service, or such further time as may be allowed by the registrar of the court issuing such document, be delivered or transmitted to such registrar by the applicant. The applicant shall also (unless the respondent files an answer) after the time limited for filing an answer, deliver or transmit to the registrar an affidavit of the service of such document, according to Form 37 in the Appendix to Where service effected otherwise than by bailiff.

the County Court Rules, with such variations as the circumstances of the case may require.

DEFAULT SUMMONS AND SERVICE.

30. A default summons shall be personally served within a period of twelve months from its date; but if any defendant named in any such summons has not been served therewith, the plaintiff may, before the expiration of twelve months, apply to the registrar, and if the registrar is satisfied that reasonable efforts have been made to serve such defendant, or that there is some other good reason why service has been delayed, he may issue a successive summons for a further period of twelve months, and so from time to time during the currency of the successive summons; and such successive summons shall be a continuance of the action on and from the day on which the plaint was entered.

31. Where a default summons is issued against partners in the name of the firm, it shall be deemed to be sufficiently served on the firm if served personally on any one of the partners.

32. Where a default summons is issued against a corporation or against any other defendant or body of defendants mentioned in Rule 26 of this Order, it shall be deemed to be sufficiently served on such corporation or other defendant or body of defendants if served in accordance with the said Rule.

33. A default summons may be served in any district in which the defendant may be met with by—

(a) A bailiff of court; or, when so requested on the entry of the plaint under Order V., Rule 9;

(b) By the plaintiff, or some clerk or servant in his permanent and exclusive employ; or,

(c) By the plaintiff's solicitor, or a solicitor acting as agent for such solicitor, or some person in the employ of either of them.

Provided that, if in any case in which no request has been made on the entry of the plaint under Order V., Rule 9, any difficulty is experienced by the bailiff in effecting service, the summons may by leave of the registrar be served by the plaintiff or some clerk or servant in his permanent and exclusive employ, or by the plaintiff's solicitor, or the agent of such solicitor as aforesaid, or some person in the employ of either of them.

34. Where a default summons has been served otherwise than by a bailiff, a copy of the summons, with the date and place of service indorsed thereon, and an affidavit of service according to the form in the Appendix (Form 37) shall, within three clear days after the day of service, or such further time as may be allowed by the registrar of the Court issuing the summons, be delivered or transmitted to such registrar by the plaintiff.

And where an order is made giving liberty to proceed as if personal service had been effected, the plaintiff shall (unless the defendant gives notice of defence or files an admission of the debt), after the expiration of the time limited for giving notice of defence, but before or at the time of entering up judgment, deliver or transmit to the registrar the order giving liberty to

proceed, and where conditions are imposed by the Order, an affidavit showing that such conditions have been complied with.

AFFIDAVIT OF DEFAULT SUMMONS.

I, A. B., of [*or* G. H., a clerk (or servant) in the permanent and exclusive employ of]; [*or* L. M., of , the solicitor for ; [*or* R. S., of , solicitor, agent for L. M., of , the solicitor for]; [*or* X. Y., a clerk in the employ of (R. S., of , solicitor, agent for) L. M., of , solicitor for], the above-named plaintiff, make oath and say: That I [am a clerk (or servant) in the permanent and exclusive employ of]; [*or*, am a clerk in the employ of (R. S., of , solicitor, agent for) L. M., of , solicitor for], the above-named plaintiff, and that I am over sixteen years of age.

That I did on the day of 19 , duly serve E. F., the above-named defendant [*or* one of the above-named defendants], with a summons, a true copy whereof is hereunto annexed, marked A. [*add, if so*, with copy of affidavit annexed], by delivering the same personally to the said defendant at [*here insert place where service was made*].

(Indorse the copy-summons or other process thus:—This paper, marked A., is the paper referred to in the annexed affidavit.)

(5.) Where a document is served by post it shall, unless the contrary be proved, be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such document it shall be sufficient to prove that the same was properly addressed and registered. Service by post.

(6.) Where the accident occurred in England, and any respondent resides in Scotland or Ireland service on such respondent may be effected in accordance with this Rule, and service so effected shall be deemed to be sufficient. [*Old Rule* 15; *Paragraph* 5 *is taken from Act of* 1897, *sect.* 2, *sub-sect.* 4; *Paragraph* 6 *is new.*] Service on respondent in Scotland or Ireland.

Paragraph 6 has been framed on the lines of the decision in *Rex* v. *Owen*, L. R. (1902) 2 K. B. 436. It was there held that where an accident occurs in England, but the employer resides in Scotland or Ireland proceedings may be taken in the County Court in England; and in reply to the argument that there were no provisions for the service out of the jurisdiction, the Court held that Rule 15 as to service by registered post met the difficulty. Channell, J., pointed out that this was probably by accident, and that the words were not intended to meet such a case; but it was held that they did in fact meet it. It is now effected by this Rule in express terms.

Stay of Proceedings.

Stay of proceedings in other arbitrations, to abide decision as to liability in selected arbitration. [Order VIII., Rules 2—6.]

16. Where several requests for arbitration are filed by different applicants against the same respondent in the same court in respect of matters arising out of the same circumstances, the respondent may, on filing an undertaking to be bound, so far as his liability to pay compensation is concerned, by the award in such one of the said arbitrations as may be selected by the judge, apply to the judge under Order VIII., Rule 2, for an order to stay proceedings in the arbitrations other than the one so selected until an award is made in such selected arbitration; and Rules 2 to 6 of Order VIII. shall, with the necessary modifications, apply accordingly. [*Old Rule* 16.]

See Rule 7 as to test actions.

Order VIII., Rule 2. Where several actions are brought by different plaintiffs against the same defendant in the same court for or in respect of causes of action arising out of the same breach of contract, wrong, or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the judge, apply to the judge for an order to stay the proceedings in the actions other than the one so selected, until judgment is given in such selected action.

Order VIII., Rule 3. Applications under the two preceding Rules shall be made upon notice to the plaintiffs to be affected by any order made thereon.

Order VIII., Rule 4. Upon the hearing of any application for consideration of actions or for stay of proceedings, the judge may impose such terms and conditions, and make such order in the matter as may be just.

Order VIII., Rule 5. If judgment in a selected action under Rule 2 of this Order is given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff gives the registrar, within one month from such judgment, notice in writing to set down his action for trial. On such judgment being given, the registrar shall send to every other plaintiff a notice according to the form in the Appendix, and if any such plaintiff gives notice to the registrar to set down his action for trial, the registrar shall appoint a day for the trial, and send by post to both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

Order VIII., Rule 6. If judgment in a selected action is given against the defendant, the plaintiffs in the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs. On such judgment being given the registrar shall send to each such plaintiff a notice according to the form in the Appendix, and a plaintiff desiring to proceed shall, within one month from the date of such notice, give to the registrar notice in writing to set down his action for trial, and on receipt of such notice the registrar shall appoint a day for the trial, and send by post to

both plaintiff and defendant notice of the day so appointed at least eight clear days before such day.

Answer by Respondent.

Answer by respondent.

17.—(1.) If any respondent desires to disclaim any interest in the subject-matter of an arbitration, or considers that the applicant's particulars are in any respect inaccurate or incomplete, or desires to bring any fact or document to the notice of the judge, or intends to rely on the fact that notice of the accident, or of death, disablement, or suspension, was not given as required by the Act, or that the claim for compensation was not made within the time limited by the Act, or intends to deny (wholly or partially) his liability to pay compensation under the Act, he shall, *ten clear days* at least before the day fixed for proceeding with the arbitration, file with the registrar an answer, stating his name and address, and the name and address of his solicitor (if any), and stating that he disclaims any interest in the subject-matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which he desires to bring to the notice of the judge, or on which he intends to rely, or the grounds on and extent to which he denies liability. Form 11.

(2.) The respondent shall with such answer file copies thereof for the applicant and the judge, and one copy for each of the other respondents; and the registrar shall within twenty-four hours after receiving such copies transmit the same by post to the applicant and the judge and the other respondents respectively.

(3.) Subject to any answer so filed, and to the provisions of the next following paragraph, the applicant's particulars, and, in the case of a claim for compensation, the liability to pay compensation under the Act, shall be taken to be admitted.

(4.) Provided, that in case of non-compliance with this Rule, and of the applicant's not consenting at the arbitration to permit a respondent to avail himself of any matter of which he should pursuant to this Rule have given notice by filing an answer, the judge may, on such terms as he shall think fit, either proceed with the arbitration and allow the respondent to avail himself of such matter, or adjourn the arbitration to enable the respondent to file such answer. [*Old Rule* 17; *amended by Rule* 2, *Sept.*, 1899.]

The judge's discretion is absolute as to admitting or refusing such evidence, or adjourning or proceeding with the arbitration. (*Silvester* v. *Cude*, 15 T. L. R. 434.)

Answer where employer is applicant.

(5.) The provisions of this Rule shall, with the necessary modifications, apply to a case in which a request for arbitration is filed by an employer; but a respondent who fails to file an answer

shall not be taken to admit the truth of any statement in the applicant's particulars in which he denies, wholly or partially, his liability to pay compensation. [*Rule* 3, *Nov.*, 1900.]

Submission to Award or Payment into Court by Respondent.

Submission to award or payment into court by respondent. Form 15.

18.—(1.) Where a respondent from whom compensation is claimed admits liability, he may at any time before the day fixed for proceeding with the arbitration,

(a) where the application is made by an injured workman, file with the registrar a notice that the respondent submits to an award for the payment of a weekly sum, to be specified in such notice; or

(b) where the application is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance on and the burial of a deceased workman who leaves no dependants, pay into court such sum of money as the respondent considers sufficient to cover his liability in the circumstances of the case.

Forms 16, 17.

(2.) The registrar shall within twenty-four hours from the time of any notice filed or payment made pursuant to the last preceding paragraph send notice thereof (with, where a notice is filed, a copy of such notice) to the applicant, and to the other respondents (if any).

Acceptance of weekly payment offered Form 18.

(3.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment specified in the respondent's notice, he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice according to the form in the Appendix, stating such acceptance, within such reasonable time before the day fixed for proceeding with the arbitration as the time of filing of notice of submission by the respondent has permitted.

Acceptance of sum paid into court. Form 18.

(4.) If the application for arbitration is made on behalf of the dependants of a deceased workman, or for the settlement of the sum payable in respect of medical attendance and burial as aforesaid, and the applicant is willing to accept the sum paid into court in satisfaction of the compensation payable to the dependants, or in respect of such medical attendance and burial (as the case may be), he shall send to the registrar and to the respondent by post, or leave at the registrar's office and at the residence or place of business of the respondent, a written notice of such willingness, according to the form in the Appendix, within such reasonable time before the day fixed for proceeding with the arbitration as the time of payment into court by the respondent has permitted.

If there are any other respondents, the applicant shall in like manner give notice of such willingness to such respondents; and if any of such respondents are willing to accept the sum paid into court in satisfaction of such compensation as aforesaid, they shall in like manner give notice of such willingness to the registrar and to the applicant and the other respondents.

Procedure if weekly payment offered or sum paid in is accepted.

(5.) If the applicant is a workman, and elects to accept in satisfaction of his claim the weekly payment submitted to by the respondent, or if in any other case the applicant and all the respondents give notice of their willingness to accept the sum paid into court, the following provisions shall apply:—

(a) where the respondent submits to an award for the payment of a weekly sum, the judge may, on application made to him in or out of court, forthwith make an award directing payment of such weekly sum accordingly;

(b) where the respondent has paid money into court, further proceedings against such respondent shall be stayed, except as hereinafter mentioned; and

(i) if the applicant and the other respondents agree as to the apportionment and application of such sum, the judge may, on application made to him in or out of court on behalf of or with the consent of all such parties, forthwith make an award for such apportionment and application;

(ii) in any other case the arbitration may proceed as between the applicant and the other respondents.

Costs payable by respondent.

(c) In any such case the judge may, in his discretion, by his award order the respondent filing notice of submission to an award or paying money into court to pay such costs as the applicant and the other respondents, or any of them, may have properly incurred before the receipt of notice of submission to an award or payment into court, including, if the judge on consideration of the facts of the case shall so order, any items which might have been allowed by order of the judge at the hearing of the arbitration.

See also Rule 61 (3.).

Form 18.

(d) If the applicant or any respondent intends to apply for any such costs, he shall give notice of his intention in his notice of acceptance, according to the form in the Appendix; or where the time of filing notice of submission to an award or the time of payment into court by the respondent does not permit of notice of acceptance being given, the applicant or any respondent may apply for such costs without giving such notice. [*Old Rule* 18 (1 *to* 5); *last part of para.* 5 *new.*]

This clause (d) is altered to bring it into accordance with the County Court Rules. (Order IX., Rule 13, para. 4.)

Acceptance at any time before arbitration opened.

Costs.

(6.) Where any party has not given notice of acceptance in accordance with this Rule, he may nevertheless accept the weekly payment which the respondent has submitted to pay, or the sum paid into court, at any time before the arbitration is called on and opened, subject to the payment of any costs which may have been reasonably incurred by the respondent since the date of filing notice of submission or the date of payment into court, and which may be allowed by the judge; and the judge may order any costs so allowed to be paid by the party so accepting, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. [*Nov.*]

This is on the lines of the County Court Rules, Order IX., Rule 13 (5.), from which it has been adapted.

Procedure and costs if weekly sum offered or sum paid in is not accepted.

(7.) In default of notice of acceptance by the applicant and all the respondents, the arbitration may proceed; but if no greater weekly payment or compensation is awarded than that which the respondent has submitted to pay or has paid into court, such respondent shall not be liable to pay any further costs than such as he might have been ordered to pay if the weekly payment offered or sum paid into court had been accepted; and the judge may order any costs incurred by such respondent after notice of submission to an award or payment into court to be paid by any party who has not given notice of acceptance of such weekly payment or sum, and may order such costs to be set off against any costs payable to such party, or to be deducted from any weekly payment or compensation awarded to such party. The judge may also order any costs incurred after notice of payment into court by any party who has given notice of acceptance to be paid by any other party who has not given such notice, and to be deducted from any compensation awarded to such last-mentioned party. [*Old Rule* 18 (6.).]

Submission to award or payment into court where employer is applicant.

(8.) The provisions of this Rule shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration admits liability to pay compensation. [*Rule* 4, *Nov.*, 1900.]

As to costs, see also Rules 32 (7.) and 61—66.

Notice to Parties against whom Indemnity claimed under Section 4.

Notice of claim to indemnity under sect. 4.

Form 23.

19. Where a respondent claims to be entitled under section 4 of the Act to indemnity against any person not a party to the arbitration, he shall, ten clear days at least before the day fixed for proceeding with the arbitration, file a notice of his claim according to the form in the Appendix; and the registrar shall seal such notice and deliver it to the respondent, who shall serve

the same, together with a copy of the applicant's request and particulars, and of the notice served on the respondent under Rules 14 and 15, upon the person against whom such claim is made: and the provisions of paragraphs 2 to 6 of Rule 15 shall apply to such service. [*Old Rule* 19.]

Sect. 4 of the Act now definitely requires questions arising under such section to be settled by arbitration, and not by action. This Rule, and Rules 20—23, apply the County Court procedure to such cases.

Appearance by third party.

20. If any person served with a notice under the last preceding Rule (hereinafter called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, or his own liability to such respondent, he must appear before the judge on the day fixed for proceeding with the arbitration, or on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise, and his own liability to indemnify the respondent to the extent claimed in the notice served on him by the respondent. [*Old Rule* 20, *altered.*]

Where notice not served in due time.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs and otherwise, as may be just. [*New.*]

See County Court Rules, Order XI., Rule 2.

Proceedings on default of appearance by third party.

21. If the third party fails to appear on the day mentioned in Rule 20, or, if the proceedings are adjourned under that Rule, on the day to which the proceedings are adjourned, then if the arbitration results in an award in favour of the applicant, or the arbitration is finally decided in favour of the applicant otherwise than by an award, the judge may on the application of the respondent make such award as the nature of the case may require in favour of the respondent against the third party: but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him.

Provided, that the judge may set aside or vary any award made against the third party under this Rule upon such terms as may be just. [*Substituted for Rule* 22.]

See County Court Rules, Order XI., Rule 3.

Application for directions. What directions may be given.

22. The third party or the respondent may apply before or at the arbitration to the judge for directions: and the judge, upon the hearing of the application, may, if satisfied that there is a question proper to be determined as to the liability of the third party to make the indemnity claimed, in whole or in part, order the question of such liability as between the third party and the respondent giving the notice to be determined at or after the arbitration, and if not so satisfied may make such award as the nature of the case may require in favour of the respondent giving the notice against the third party: or the judge may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he may think proper for having the question most conveniently determined, and as to the mode or extent in or to which the third party shall be bound or made liable by the award in the arbitration. [*Substituted for Rule* 21.]

See County Court Rules, Order XI., Rule 4.

Costs.

23. The judge may decide all questions of costs as between a third party and the other parties to the arbitration, and may order any one or more to pay the costs of any other or others, or give such directions as to costs as the justice of the case may require. [*Substituted for Rule* 22 (2) (*c*).]

See County Court Rules, Order XI., Rule 5.

Notice to Parties against whom Indemnity claimed under Section 6, *or otherwise.*

Notice of claim to indemnity under sect. 6, or otherwise than under sect. 4.

Form 23.

24.—(1.) Where a respondent claims that if compensation is recovered against him he will be entitled under section 6 of the Act, or otherwise than under section 4, to indemnity against any person not a party to the arbitration, he shall file and serve a notice of his claim in accordance with Rule 19. [*Old Rule* 19.]

Where indemnity is claimed from a third party under sect. 6 of the Act, such claim must be settled by action unless the parties consent to arbitration. This Rule provides for the third party being brought in so as to be bound by the result of the arbitration as between the applicant and the respondent, but not as to his liability to indemnify such respondent.

If person served makes default in appearing, he is to be deemed to

(2.) If any person served with a notice under the last preceding paragraph (hereinafter called the third party) desires to dispute the applicant's claim in the arbitration as against the respondent on whose behalf the notice has been given, he must appear before the judge on the day fixed for proceeding with the arbitration, or

on any day to which he may have received notice from the registrar that the arbitration has been adjourned or postponed; and in default of his so doing he shall be deemed to admit the validity of any award made against such respondent as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent, whether such award is made by consent or otherwise. [*Old Rule* 20.] admit validity of award against respondent.

Provided, that if it appears to the judge before or at the arbitration that the notice of claim has not been served on the third party in time to enable him to appear on the day hereinbefore mentioned, or that for any other sufficient cause the third party is unable to appear on such day, the judge may adjourn the proceedings in the arbitration on such terms, as to costs or otherwise, as may be just. [*New.*] Where notice not served in due time.

See County Court Rules, Order XI., Rule 2.

(3.) The third party or the respondent may apply before or at the arbitration to the judge for directions; and the judge, upon the hearing of the application, may, if it appears desirable so to do, give the third party leave to resist the claim of the applicant against the respondent upon such terms as may be just, or to appear at the arbitration and take such part therein as may be just, and generally may give such directions as he shall think proper. [*Old Rule* 21 (1.).] Application to judge for directions as to conduct of arbitration.

(4.) If the third party obtains leave to resist the claim of the applicant against the respondent, the provisions of Rule 23 as to costs shall apply. [*Old Rule* 21 (2.).] Costs.

(5.) Nothing in this Rule shall empower the judge to decide (otherwise than by consent) any question as to the liability of the third party to indemnify the respondent, or to make any award in favour of the respondent against the third party, or to make any further or other order than that the third party shall not be entitled in any future proceedings between the respondent and such third party to dispute the validity of the award as to any matter which the judge has jurisdiction to decide in the arbitration as between the applicant and the respondent. [*Old Rule* 22 (1.).] Judge how far empowered to decide questions as to liability of third party.

(6.) Provided, that with the consent of the respondent and the third party,

(a) if the arbitration results in an award in favour of the applicant, or is finally decided in favour of the applicant otherwise than by an award, and the third party admits his liability to indemnify the respondent, the judge may, on application made to him at or after the hearing of the arbitration or the final decision thereof, make such award as the nature of the case may require in favour of the respondent against the third party; but execution thereon shall not issue without leave of the judge until after satisfaction by the respondent of the award against him, or the amount recovered against him; or

(b) the judge may, on an application for directions, order any question as to the liability of the third party to make the indemnity claimed to be settled, as between the respondent and the third party, by arbitration after the arbitration between the applicant and the respondent, and may on such subsequent arbitration make such award as the nature of the case may require in favour of either party against the other.

(c) In any such case the judge may decide all questions of costs as between the respondent and the third party, and may order either of such parties to pay the costs of the other (including any costs payable by such party to any other party to the arbitration), or give such directions as to such costs as the justice of the case may require. [*Old Rule* 22 (2.).]

The indemnity will include reasonable costs incurred. In *G. N. R.* v. *Whitehead*, 18 T. L. R. 816, the plaintiff recovered from the defendant 78*l.* 11*s.* 3*d.*, the amount of the award made against him, and 10*l.* 17*s.* 2*d.* for taxed costs paid the applicant.

Third Party Procedure where Employer is Applicant.

Third party procedure where employer is applicant.

25. The provisions of Rules 20 to 24 shall, with the necessary modifications, apply to a case in which an employer who has filed a request for arbitration claims to be entitled to indemnity against any person not a party to the arbitration. [*Rule* 5, *Nov.*, 1900.]

Presumably this Rule will apply when a principal is liable under sect. 4, and who has to stand in place of the employer.

Claim to Indemnity as between Respondents.

Claim to indemnity as between respondents.

26.—(1.) Where a respondent claims to be entitled to indemnity against any other respondent, a like notice shall be issued and the like procedure shall thereupon be adopted for the determination of questions between the respondents as might be issued and adopted against such other respondent if such last-mentioned respondent were a third party.

(2.) Nothing herein contained shall prejudice the rights of the applicant against any respondent. [*Old Rule* 23.]

Appleby v. *Horsley and Lovatt*, (1899) 2 Q. B. 521. When indemnity is claimed by one respondent against another, notice of claim is imperative.

Procedure on Arbitration.

Procedure in arbitration.

27.—(1.) Subject to the special provisions of these Rules, the procedure in an arbitration shall be the same as the procedure in an action commenced in the County Court by plaint and summons

in the ordinary way, and determined by the judge without a jury; and the statutory provisions and Rules for the time being in force relating to such actions shall, with the necessary modifications, apply to such arbitration accordingly; and in the application of such provisions and Rules the applicant's request for arbitration shall be deemed to be a summons with particulars annexed, the day fixed for proceeding with the arbitration shall be deemed to be the return day, and the applicant and respondents shall be deemed to be plaintiff and defendants respectively. [*Old Rule* 24.]

(2.) Provided, that the burden of proof of any facts which are not admitted shall be the same, whoever the party may be by whom the request for arbitration is filed. [*Rule* 6, *November*, 1900.] Burden of proof of facts not admitted.

Award.

28.—(1.) The award of the judge on any arbitration shall be prepared and settled by the registrar, and shall be signed by the judge, and shall be sealed and filed, and sealed copies thereof shall be served on all persons affected thereby in accordance with Rule 7 of Order XXIII.; and such award shall be enforceable in the same manner as a judgment or order of the court. Award. Form 24. Order XXIII., Rule 7.

Any judgment or order for the payment of money or costs, or both, or any other order, shall, subject to any special order by the court, and subject to the provisions of these Rules, be prepared by the registrar and delivered to the bailiff, who shall within twenty-four hours send the same, by post or otherwise, to the party on whom service has to be made: Provided that it shall not be necessary for the party in whose favour any such judgment or order has been made to prove, previously to his taking proceedings thereon, that it was posted or reached the opposite party. Order XXIII., Rule 7.

(2.) The judge shall have power at any time to correct any clerical mistake or error in such award arising from any accidental slip or omission. [*Old Rule* 26.]

This provision is similar to that in the Arbitration Act, 1889.

PROCEEDINGS BEFORE ARBITRATOR APPOINTED BY JUDGE.

Appointment of Arbitrator by Judge.

Appointment of arbitrator by judge.

29. With respect to the appointment of an arbitrator by the judge, the following provisions shall apply :—

(a) If with respect to any court the Lord Chancellor, by general order, authorises the settlement by an arbitrator appointed by the judge of matters which, in default of such authorisation, would be settled by the judge, the judge may from time to time, on an application being made for the settlement of any matter, either settle the same himself, or he may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the Court, an arbitrator to settle such matter.

(b) If with respect to any court the Lord Chancellor makes no such general order as aforesaid, then, on an application being made for the settlement of any matter, the judge may (if from the state of business in the court, or for any other reason, he is unable to settle such matter within a reasonable time) apply to the Lord Chancellor to authorise the settlement of such matter by an arbitrator appointed by the judge.

(c) If the Lord Chancellor does not grant such authority, the judge shall proceed to settle the matter in accordance with the Act and these Rules.

(d) If the Lord Chancellor grants such authority, the judge may, with the approval of the Lord Chancellor, appoint, by writing under his hand, and filed in the court, an arbitrator to settle such matter.

(e) In case of the death or refusal or inability to act of an arbitrator appointed under this Rule, the judge may, on the application of any party, appoint a new arbitrator in accordance with this Rule. [*Old Rule* 27.]

Fixing Day for Arbitration.

Fixing day and place for proceedings before arbitrator.

30. Where any matter is to be settled by an arbitrator, the judge shall return the copy of the request for arbitration to the registrar, with the appointment of such arbitrator, to be transmitted to the arbitrator; and the registrar shall transmit the copy of the request and a copy of the appointment to the arbitrator, who shall, as soon as conveniently may be, appoint a day and hour for proceeding with the arbitration, in accordance with Rule 13, and

the provisions of that Rule as to the place where an arbitration shall be held shall apply. Provided, that where the arbitration is to be held at the place where the court is held, the day appointed for the arbitration shall, if possible, be one on which the court or other suitable accommodation in the courthouse will be available for the arbitration. [*Old Rule* 28.]

Procedure before Arbitrator.

Procedure before arbitrator.

31.—(1.) On the day for proceeding with an arbitration being fixed the registrar shall proceed according to Rule 14, and thenceforward the arbitration shall proceed in the same manner as an arbitration before the judge; and these Rules shall apply and the officers of the court shall act accordingly, with the substitution of the arbitrator for the judge.

(2.) Provided that—

(a) In any case coming within the provisions of paragraph 5 (a) or paragraph 5 (b) (i) of Rule 18, or in any other case in which, after an arbitrator has been appointed, but before the day fixed for proceeding with the arbitration, the parties agree upon an award, the judge may, on application made to him in or out of court on behalf of or with the consent of all parties, settle the matter himself; and thereupon the functions of the arbitrator as to such matter shall cease, and the registrar shall forthwith inform him that the matter has been settled; and

(b) any application for the enforcement of or for staying proceedings on an award, which would in the case of an award made by the judge be required to be made to the judge, shall, in the case of an award made by an arbitrator, be in like manner made to the judge. [*Old Rule* 29.]

Submission of Question of Law by Committee or Arbitrator to Judge.

Submission of question of law by committee or arbitrator to judge. Act, Sched. 2, para. 4.

32.—(1.) Where a committee or an arbitrator (whether agreed on by the parties or appointed by the judge) submits any question of law for the decision of the judge under paragraph 4 of the second schedule to the Act, such submission shall be in the form of a special case.

Statement of case.

(2.) The case shall be intituled in the matter of the Act and of the arbitration, and shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and documents as may be necessary to enable the judge to decide the questions of law raised thereby. Upon the argument of the case the judge

and the parties shall be at liberty to refer to the whole contents of such documents, and the judge shall be at liberty to draw from the facts and documents stated in the case any inference, whether of fact or of law, which might have been drawn therefrom if proved at the hearing of an arbitration.

Fixing day for hearing. Form 25. [*Conf.* Order XL., Rule 3 (3.).

(3.) The case shall be signed by the chairman and secretary of the committee or by the arbitrator, and sent to the registrar, who shall transmit the same to the judge, and the judge shall as soon as conveniently may be appoint a day and hour for hearing the case, and instruct the registrar to give notice thereof forthwith to the parties. The day shall be so fixed as to allow notice to be given ten days at least before the day fixed for the hearing, unless the judge shall, with the consent of all parties, fix an earlier day.

Copies of case.

(4.) The registrar shall, on the application and at the cost of any party, furnish him with a copy of the case.

Power of judge on hearing of case.

(5.) On the hearing of the case the judge may, after deciding the question submitted to him, remit the case with a memorandum of his decision to the committee or arbitrator, for them or him to proceed thereon in accordance with the decision; or if the decision of the judge on the question submitted to him disposes of the whole matter, he may himself make an award in the arbitration in accordance with such decision.

Re-statement.

(6.) The judge may remit the case to the committee or arbitrator for re-statement or further statement.

Costs of special case.

(7.) The judge shall have the same power over the costs of a special case as he has over the costs of an arbitration, or he may direct that such costs shall be dealt with as costs attending the arbitration; and the provisions of the Act and these Rules as to such costs shall apply accordingly. [*Old Rule* 30.]

Appearance of Parties in Arbitration.

Appearance of parties. [*Conf.* County Courts Act, 1888, s. 72.]

33.—(1.) A party to any arbitration under the Act may appear—

(a) in person:

(b) by any solicitor who would be entitled to appear for such party in an action in the County Court:

(c) by counsel:

Or, by leave of the judge or arbitrator, a party may appear—

(d) by a member of his family:

(e) by a person in the permanent and exclusive employment of such party:

(f) in the case of a company or corporation, by any director of the company or corporation, or by the secretary or any other officer or any person in the permanent and exclusive employment of the company or corporation:

(g) by any officer or member of any society or other body of persons of which such party is a member or with which he is connected; or

(h) under special circumstances, by any other person.

(2.) No person other than a solicitor who appears or acts on behalf of any party in any arbitration under the Act shall be entitled to have or recover any fee or reward for so appearing or acting, other than such travelling expenses and (in the case of a workman or a member of his family) allowance for time (if any) as may be allowed by the judge or arbitrator: Provided that nothing in these Rules contained shall affect the right of counsel to appear or act in any arbitration, or the right of any solicitor to recover costs in respect of his employment of counsel to appear or act as aforesaid. [*Old Rule* 32.] [*Conf.* County Courts Act, 1888, s. 72.]

Duty of Judge as to taking Notes.

34. At the hearing of any arbitration or special case the judge shall make a note of any question of law raised, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision in the arbitration or on the hearing of the case: and he shall, at the expense of any party to such arbitration or case, furnish a copy of the note so taken to or allow a copy of the same to be taken by or on behalf of such party, and shall sign such copy, whether a notice of motion by way of appeal has been served or not. [*Old Rule* 35.] Note to be taken of question of law raised, &c. and copy furnished. [*Conf.* County Courts Act, 1888, ss. 120, 121.]

It will be observed under this Rule the judge shall, without being requested, make a note of any point of law. This was due to the fact of the Court of Appeal experiencing difficulty in ascertaining what had actually been decided in cases in which notes had not been taken, sometimes necessitating a new trial, as in *Brine* v. *Corry* (1905), The Times, May 5.

Proceedings against Insurers under Section 5.

35.—(1.) Where under section 5 of the Act the rights of an employer against any insurers under a contract entered into by the employer with the insurers in respect of any liability under the Act to any workman are transferred to and vest in the workman, the following provisions shall have effect. Where rights of bankrupt, &c. employer against insurers vest in workman under sect. 5.

Examination of employer as to insurance.

(2.) Where a workman who is or claims to be entitled to compensation from an employer to whom section 5 of the Act applies is unable to ascertain whether such employer has entered into a contract with insurers in respect of his liability, he may apply to the court on affidavit intituled in the matter of the Act, and setting forth the facts on which the application is made, for an order for the examination of the employer, and the court may make an order accordingly; and the provisions of Order XXV., Rules 71 and 72, shall apply in the same manner as if the employer were a debtor liable under a judgment or order.

Order XXV., Rules 71, 72.

Order XXV., Rule 71.

(1.) Where a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before the court, as the court shall appoint; and the court may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

(2.) Where an order is made under this Rule a sealed copy of the order, indorsed with a notice in the form in the Appendix, shall be served upon the person to be bound thereby. The copy so indorsed shall be issued by the registrar for service on the application of the party entitled to the benefit of the order. By leave of the registrar it may be issued to the applicant or his solicitor, and served by any person by whom a default summons may be served under Order VII., Rule 33, but in default of such leave it shall be issued to, and served by, a bailiff. Service shall in all cases be personal, unless the judge for good cause makes an order for substituted service pursuant to Order VII., Rule 40.

(3.) Any person wilfully disobeying an order for attendance and examination or the production of any books or documents under this Rule, to whom payment or a tender of payment shall have been made of a sum reasonably sufficient to cover travelling expenses, not exceeding the scale of allowances for the travelling expenses of witnesses prescribed by these Rules, shall be deemed guilty of contempt of court, and may be dealt with accordingly.

(4.) In this Rule the expression "debtor liable under such judgment or order," includes a married woman against whom judgment has been obtained in respect of her separate estate.

Order VII., Rule 40.

Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than a default or judgment summons, or a summons under the Summary Procedure on Bills of Exchange Act, 1855), petition, notice, proceeding, or document cannot be made, the court may, upon an affidavit showing grounds, make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

Order XXV., Rule 74.

The costs of any application under Rules 5 and 7 of this order, or either of them, and of any proceedings arising from or incidental thereto, shall be

in the discretion of the court, and paragraphs 4 to 6 of Order XII., Rule 2, shall apply to such costs.

(3.) The provisions of the Act and these Rules as to the settlement of matters by arbitration shall with the necessary modifications apply to the settlement by arbitration of any question as to the liability of the insurers or the amount of their liability. [*New: substituted for Rules 51 to 58.*] **Provisions as to arbitration. Form 11.**

In *London Steam Insurance Co.* v. *Commissioners of Inland Revenue*, and in *Victoria Boiler, &c. Co.* v. *Same*, (1899) 1 Q. B. 353, it has been held that policies under seal must be stamped 10*s.*, or if agreements, 6*d.*

Small policies, where premium paid is under 20*s.* per annum, are, by Finance Act, 1899, s. 11, to be stamped 1*d.*

11. The provisions contained in sect. 98 of the Stamp Act, 1891, in reference to the expression "policy of insurance against accidents," shall extend to and include policies of insurance or indemnity against liability incurred by employers in consequence of claims made upon them by workmen who have sustained personal injury, when the annual premium on such policies does not exceed one pound.

Policies under the above section are to be stamped 1*d.* only.

Masters, Seamen, Apprentices, and Pilots. Section 7 (a).

36.—(1.) In the application of the Act and these Rules in the case of masters, seamen, and apprentices to the sea-service and apprentices in the sea-fishing service, who are workmen within the meaning of the Act, and who are members of the crew of any such ship as in section 7 of the Act mentioned, and to pilots when employed on any such ship, the following provisions shall have effect. **Masters, seamen, apprentices, and pilots.**

(2.) In the case of the death of a master, seaman, apprentice, or pilot, the claim for compensation shall state the date at which news of the death was received by the claimant. **Claim for compensation in case of death.**

(3.) The claim for compensation on behalf of dependants of a master, seaman, apprentice, or pilot lost with his ship, and the particulars appended or annexed to the request for arbitration, shall state the date at which the ship was lost or is deemed to have been lost. **Where master, &c. lost with ship.**

(4.) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case shall require. **Forms of request for arbitration. Forms 6, 7.**

(5.) In any document, notice, or proceeding it shall be sufficient to describe the owners of the ship as "the owners of the ship _____"; and the provisions of the County Court Rules as to disclosure of the names of partners shall with the necessary modifications apply to the disclosure of the names of such owners. **Description of owners in documents and proceedings.**

(*a*) See *ante*, Chap. XII., Provisions Special to Seamen.

Service of documents and proceedings. Merchant Shipping Act, 1894, ss. 59, 696.

(6.) Subject to the provisions of paragraph (a) of section 7 of the Act as to service of the notice of accident and the claim for compensation, any document, notice, or proceeding to be served on the owners of a ship shall be deemed to be sufficiently served if served on the managing owner or manager for the time being of the ship, or (except where the master is claiming compensation) on the master of the ship: and section 696 of the Merchant Shipping Act, 1894, sub-section (1), shall apply to service on the master of the ship. [*New.*]

Detention of Ships. Section 11.

Application for detention of ship. Act, s. 11. 5 Edw. 7, c. 10.

37.—(1.) An application for an order for the detention of a ship under section 11 of the Act shall be made in accordance with the Rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905; and those Rules, with the necessary modifications, shall apply accordingly.

(2.) Subject to any such Rules as in the last preceding paragraph mentioned, an application for an order for detention shall be made in accordance with the following Rules.

Application and evidence. Form 26.

(3.) The application may (subject to the provisions of paragraph 9 of this Rule) be made *ex parte* either in or out of court, according to the form in the Appendix, and shall be supported by affidavit or other evidence showing, to the satisfaction of the judge, the grounds on which the application is made.

Undertaking as to damages. Form 27.

(4.) The judge may, before granting the application, require the applicant to give or procure an undertaking, to the satisfaction of the judge, to abide by any order as to damages and costs which may be thereafter made, in case any person affected by the order for detention shall sustain any damages by reason of the order which the applicant ought to pay.

Order and execution thereof. Form 28.

(5.) An order for detention shall specify the amount for which security shall be given, and shall be according to the form in the Appendix, and shall be issued in triplicate; one copy shall be delivered to the applicant, and the other two copies to the officer named by the judge; and one of such last-mentioned copies shall be delivered by the officer to the person who is at the time of the execution of the order apparently in charge of the ship, or, if there is no person apparently in charge, shall be nailed or affixed on the main mast or on the single mast of the ship; and the other copy shall be retained by the officer.

Rescission of order.

(6.) The judge may at any time on good cause shown rescind any order for detention made by him.

Security. County Courts Act,

(7.) The provisions of sections one hundred and eight and one hundred and nine of the County Courts Act, 1888, and of Order XXIX., as to security, shall with the necessary modifica-

tions apply to the giving of security; and the approval by the judge of any security shall be signified in writing signed by him. Where security is given by bond, such bond shall be according to the form in the Appendix. 1888, ss. 108, 109. Order XXIX. Form 29.

(8.) If the judge rescinds any order for detention, or is satisfied that satisfaction has been made, or when security has been given and approved, or in any other case if the applicant so requires, the judge shall deliver to the party applying for the same an order according to the form in the Appendix, directed to the officer named in the order for detention, authorising and directing him, upon payment of all costs, charges, and expenses attending the custody of the ship, to release it forthwith. Release. Form 30.

(9.)—(a) With respect to notice of application for an order for detention, and to undertakings to give security, the following provisions shall have effect. Notice of application to agent or solicitor of owner.

(b) Notwithstanding anything in this Rule contained, a person intending to apply for an order for detention shall, if the name and address of an agent in England for the owners of the ship, or of a solicitor in England authorised to act for the owners, agent, master, or consignee of the ship, are known to him, give to such agent or solicitor, by post, telegram, or otherwise, such notice of the time and place at which the application for an order for detention is intended to be made as may be practicable in the circumstances of the case.

(c) If a solicitor in England represents that he is authorised to act for the owners, agent, master, or consignee of the ship, and signs an undertaking according to the form in the Appendix, to give security for an amount agreed on between the parties or fixed by the judge, then, on such undertaking being filed in court, Undertaking by solicitor. Form 30A.

(i) the judge may in his discretion refuse to make an order for detention; or

(ii) if an order for detention has been made, but not executed, the judge may rescind it; or

(iii) if an order for detention has been made and executed, the judge may deliver to the party applying for the same an order of release in accordance with paragraph 8 of this Rule.

(d) An undertaking given in accordance with the last preceding paragraph shall be filed in the court to which the application for an order for detention is made or is intended to be made. Filing of undertaking.

Attachment for non-compliance with undertaking.

(e) A solicitor who fails to give security in pursuance of his undertaking to do so shall be liable to attachment.

See County Court Rules, Order XXXIX., Rules 6, 7, as to Admiralty action, and Form 373

Particulars to state circumstances under which persons giving security are made respondents. Form 8.

(10.) Where proceedings by way of arbitration for the recovery of compensation are taken against the person giving security, the request for arbitration and particulars must state concisely the circumstances under which the persons giving security are made respondents.

Transmission of documents, &c. where proceedings commenced in court other than that in which order for detention made or applied for.

(11.) Where proceedings are commenced in any court in England, Scotland, or Ireland other than that in which the order for detention was made or applied for, the registrar of the court in which the order was made or applied for shall on request transmit by registered post to the registrar of the court in which the proceedings are commenced all original documents filed in the matter, and a certified copy of all records made with reference to the matter, and any bond by way of security given in the matter, and shall transfer to such last-mentioned court any money paid into court by way of security in the matter; and the provisions of Order VIII., Rule 9, as to the costs of copies and the costs of transmission shall apply to any transmission under this paragraph.

See Rule 75, Transfer of Proceedings.

Costs of application for order for detention.

(12.) The costs incurred by any party in relation to an application for an order of detention and any proceedings consequent thereon may in any subsequent proceedings by way of arbitration be allowed as costs of the arbitration. [*New.*]

Proceedings where Employer who has paid Compensation, or from whom Compensation is claimed, desires to obtain Order for Detention of Ship. 5 Edw. 7, c. 10.

Application by employer for detention of ship. 5 Edw. 7, c. 10.

38. Where an employer who has paid compensation or against whom a claim for compensation has been made under the Act desires to make an application for the detention of a ship under the Shipowners' Negligence (Remedies) Act, 1905, the provisions of the last preceding Rule shall apply, subject to the Rules for the time being in force under the last-mentioned Act, and to the following modifications, viz.:

Forms 31, 32, 33.

(i) An application for an order for detention, an order for detention, and a bond given by way of security, shall be according to the forms in the Appendix.

Form 23.

(ii) Where proceedings by way of arbitration for the recovery of compensation are taken against the employer, he may

bring in the persons giving security as third parties in accordance with Rule 24, and the provisions of that Rule shall apply accordingly.

(iii) Where such proceedings are taken against the employer in any court other than that in which the order for detention was made or applied for, and the employer brings in the persons giving security as third parties, the provisions of paragraphs 11 and 12 of the last preceding Rule shall apply.

(iv) Where the employer has paid compensation in respect of the injury, all questions as to his right to indemnity against the persons giving security, and as to the amount of such indemnity, shall in default of agreement be settled by action, or by consent of the parties, by arbitration in accordance with the Act and these Rules; and if such questions are settled by arbitration, the provisions of paragraphs 10 to 12 of the last preceding Rule shall apply. [*New.*]

Industrial Diseases.

Application of Act and Rules to cases of industrial diseases.

39.—(1.) In the application of the Act and these Rules in the case of a workman disabled by or suspended on account of his having contracted any disease mentioned in section 8 of and the third schedule to the Act, or whose death has been caused by any such disease, the following provisions shall have effect.

Notice of disablement.

(2.) The notice required by section 2 of the Act shall state the date and cause of the disablement or suspension; and where a certificate of disablement or a certificate of or relating to suspension has been given, a copy thereof shall on demand be furnished to the employer.

Forms of request for arbitration.

Forms 9, 10.

(3.) A request for arbitration shall be according to such one of the forms in the Appendix as shall be applicable to the case, with such modifications as the nature of the case may require.

Adding respondent under Act, s. 8 (1) (c) (ii).

Forms 19, 20.

(4.)—(a) If the employer desires to add any other employer as a party to the arbitration, pursuant to proviso (ii) to paragraph (c) of sub-section (1) of section 8 of the Act, he shall file with the registrar in duplicate a notice according to the form in the Appendix: and thereupon the registrar shall make an order adding such other employer as a respondent, and may if necessary adjourn the hearing of the arbitration for such time as may be necessary to enable such other employer to be duly served.

Notice of order, and service on

(b) Where a respondent is added under the last preceding paragraph, copies of the notice pursuant to which he is so added, and of the order, shall be sent by post to the applicant and the

added respondent.

Forms 21, 22.

original respondent; and the like copies, together with a copy of the applicant's request and particulars, and of the notice served on the original respondent under Rules 14 and 15, and a notice according to the form in the Appendix as to the place at which and the day and hour on and at which the arbitration will be proceeded with, shall be issued by the registrar for service on the added respondent; and such copies and notices shall be served on the added respondent in accordance with Rule 15, with the substitution of the original respondent for the applicant.

Application of Rules to added respondent.

(c) The provisions of these Rules as to respondents shall apply to the added respondent from the date of service on him as if he had been originally made a respondent.

Procedure at arbitration.

(d) At the hearing of the arbitration the judge or arbitrator shall decide all questions as between the applicant and the original and added respondents, and may make such award as may be necessary effectively and complete to adjudicate upon and settle all the questions involved in the arbitration, and may make such order as to costs as between the applicant and the respondents, and as between the respondents themselves, as may be just.

Costs.

Claim to contribution under Act, s. 8 (1, c) (ii).

Form 23.

(5.) Where the employer claims under proviso (iii) to paragraph (c) of sub-section (1) of section 8 of the Act to be entitled to contribution from any other employer, he may bring in such other employer as a third party in accordance with Rules 19 to 23, 25 and 26; and the provisions of those Rules shall with the necessary modifications apply to any such claim to contribution in like manner as they apply to claims to indemnity. [*New.*]

Appointment of Arbitrator by Judge in place of Arbitrator agreed on by the Parties under Schedule II., Paragraph 8 (a).

Application for appointment.

Form 31.

40.—(1.) In case of the death or refusal or inability to act of an arbitrator agreed on by the parties, any party to the arbitration who desires to make an application to the judge to appoint a new arbitrator shall apply in writing to the registrar to fix a time and place for the hearing of such application.

Fixing of hearing by registrar.

(2.) The registrar shall fix the hearing of the application before the judge for any court appointed to be held within fourteen days from the date of the application to the registrar, but so that he shall not, except by consent, fix the hearing for a day less than seven days from the date of the application.

(a) See *ante*, p. 153.

(3.) If there is no available court, the registrar shall send notice of the intended application to the judge, who shall as soon as conveniently may be fix a time and place for the hearing of the application. Such time shall not, except by consent, be less than seven days from the date of the application to the registrar. Fixing of hearing by judge.

(4.) On the time and place for the hearing of the application being fixed, the registrar shall issue to the applicant a summons under the seal of the court, according to the form in the Appendix, addressed to the other party to the arbitration, and requiring him to attend on the hearing of the application. Summons to other party. Form 35.

(5.) Such summons shall be served by the applicant on the other party in accordance with Rule 15 of these Rules not less than four clear days before the day fixed for the hearing, unless such party agrees to accept shorter service. Service of summons.

(6.) On the day fixed for the hearing the judge shall dispose of the application on hearing the parties, or on hearing the applicant and on proof of service of the summons on the other party, if such other party does not appear. Hearing of application.

(7.) Before appointing any person to act as arbitrator, the judge shall ascertain that such person is willing to serve if appointed. Ascertainment of willingness to act.

(8.) The appointment may be made by indorsement on the summons, or by a separate order. Order.

(9.) The costs of the application shall be in the discretion of the judge, who may order the same to be paid by one party to the other, or to be dealt with as costs attending the arbitration. Such costs, if allowed, shall be taxed on such scale as the judge shall direct. [*New.*] Costs.

Memorandum under Schedule II., Paragraph 9 (a).

41.—(1.) The memorandum as to any matter decided by a committee or by an arbitrator or by agreement, which is by paragraph 9 of the second schedule to the Act required to be sent to the registrar, shall be intituled in the matter of the Act, and shall be left at the office of the registrar, or sent by post by registered letter addressed to the registrar at his office, as soon as may be after the matter has been decided. Memorandum to be sent to registrar. Act, Sched. 2, para. 9. Form 36.

Though not desirable to do so, yet if so used, the award itself is the best memorandum. (*Bailey* v. *Plant*, 17 T. L. R. 449.)

(a) See *ante*, p. 153.

(2.) Where the matter is decided after a medical referee has been appointed to report on any matter under paragraph 15 of the second schedule to the Act, a copy of the report of the referee shall be annexed to the memorandum and recorded therewith; and if the referee attended any proceeding in the arbitration, it shall be so stated in the memorandum. [*Old Rule* 38.]

This clears up some doubt as to the rights of the parties to see the referee's report. Formerly, it was rather thought to be intended for the use of the arbitrator only. (*Borden* v. *Barrow*, The Times, July 9, 1901.)

Authentication of memorandum of decision of committee or arbitrator.

42.—(1.) If the matter is decided by a committee or an arbitrator, the memorandum shall be authenticated by the signatures of the chairman and secretary of the committee, or by the signature of the arbitrator; and it shall be the duty of the committee or arbitrator, as soon as may be after the decision, to draw up such memorandum and to sign the same or cause it to be signed as aforesaid, and to leave or send the same as aforesaid, or to deliver the same to some party interested, to be by him so left or sent. [*Rule* 39, *altered*.]

Authentication of memorandum of agreement.

(2.) If the matter is decided by agreement, the memorandum shall be authenticated by the signatures of all parties to such agreement, or by the signatures or signature of some or one of them, or by the signatures or signature of the solicitors to the parties or some or one of them on their or his behalf. [*Old Rule* 40, *altered*.]

Copies.

(3.) There shall be left or sent with the memorandum a copy thereof for every party interested, other than the party (if any) by whom the memorandum is left or sent. [*New*.]

Notice to parties interested of memorandum having been received.

Form 37.

43. On the receipt of the memorandum the registrar shall send one of the copies thereof to every party interested, with a notice according to the form in the Appendix, requesting such party to inform him within seven days from the date of the notice whether the memorandum is genuine, or whether he disputes it, and, if so, in what particulars, or objects to its being recorded, and, if so, on what grounds. [*Substituted for Rule* 41.]

Recording of memorandum, if not disputed.

44. If all the parties interested admit the genuineness of the memorandum, or do not within such period of seven days dispute it or object to its being recorded, the registrar shall, subject to provision (d) to paragraph 9 of the second schedule to the Act, and to Rule 49, record it without further proof. [*Old Rule* 42, *altered*.]

Where memorandum disputed, or employer

45. If any party interested disputes the genuineness of the memorandum, or if, where a workman seeks to record a memorandum of agreement between his employer and himself, the

employer alleges that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of the memorandum, such party or employer shall within seven days from the date of the notice mentioned in Rule 43 file with the registrar a notice according to the form in the Appendix that he disputes the genuineness of the memorandum or that he objects to its being recorded, and shall with such notice file a copy thereof for each of the other parties interested. [*Substituted for Rule* 43.]

objects to its being recorded. Act, Sched. 2, para. 9 *b*. Form 38.

Formerly, the only question the registrar could enquire into was the memorandum of a genuine agreement. If so, it had to be registered, even though at the time the workman was not entitled to payment of the stipulated compensation (*Blake* v. *M. R.*, (1901) 1 K. B. 503), or even if the agreement were at the time determined (*Keeling* v. *Eastwood*, 116 L. T. J. 595). It was no objection to the registration that the agreement was implied or verbal only (*Webster* v. *L. & N. W. R.*, L. T., June 29, 1901).

46. On the receipt of any such notice as in the last preceding Rule mentioned, the registrar shall send a copy thereof to each of the other parties interested, together with a notice according to the form in the Appendix, informing such party that the memorandum will not be recorded except with the consent in writing of the party or employer disputing the same or objecting to the same being recorded, or by order of the judge. [*Substituted for Rule* 43.]

Notice of dispute or objection. Form 39.

47.—(1.) If the consent mentioned in the last preceding Rule is obtained, the registrar shall, subject to proviso (d) to paragraph 9 of the second schedule to the Act, and to Rule 49, record the memorandum without further proof.

Subsequent proceedings.

(2.) If such consent cannot be obtained, any party interested may apply to the judge to order the memorandum to be recorded. [*Substituted for Rule* 44.]

Proceedings for Record of Memorandum or Rectification of Register.

48. The following provisions shall apply to an application for an order that a memorandum be recorded, or an application to the judge to rectify the register pursuant to paragraph 9 of the second schedule to the Act.

Proceedings on application for record of memorandum or rectification of register. Form 40.

(a) The application shall be made in court on notice in writing, stating the relief or order which the applicant claims.

See Order XII., Rule 11.

(b) The notice shall be filed with the registrar, and copies thereof shall be served—

(i) in the case of an application for an order that a memorandum be recorded, on the party disputing the memorandum or objecting to its being recorded, and on all other parties interested;

(ii) in the case of an application to rectify the register, on every party who would be affected by such rectification, subject to the provisions of these Rules as to the parties to an arbitration;

or on the solicitor of such party, ten clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(c) On the hearing of the application witnesses may be orally examined in the same manner as on the hearing of an action.

(d) On the hearing of the application the judge may make such order or give such directions as he may think just, regard being had, in the case of an application for an order that a memorandum of an agreement be recorded, to proviso (d) to paragraph 9 of the second schedule to the Act.

(e) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such application. [*Old Rule* 45.]

Reference of Agreement presented for Registration to the Judge. Schedule II., Paragraph 9, Proviso (d).

Proceedings where agreement presented for registration is referred by registrar to judge. Act, Sched. 2, para. 9, proviso d).

49.—(1.) Where a memorandum of an agreement presented for registration relates to any matter referred to in proviso (d) to paragraph 9 of the second schedule to the Act, the registrar may, before recording the same, make such inquiries and obtain such information as he may think necessary in order to satisfy himself whether the memorandum may properly be recorded, regard being had to the said proviso.

(2.) Where it appears to the registrar that the memorandum ought not to be recorded for any reason mentioned in the said proviso, he shall make a report to the judge in writing, stating the information he has obtained, and the grounds on which it appears to him that the memorandum ought not to be recorded.

(3.) If on consideration of the registrar's report it appears to the judge that the memorandum may properly be recorded, he may so direct, and it shall be recorded accordingly.

(4.) If on consideration of the registrar's report it appears to the judge that the memorandum should not be recorded without further inquiry, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, informing them that he has referred the matter to the judge, and requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge. Form 41.

(5.) The notices shall be sent to the parties or their solicitors ten clear days at least before the day fixed for the inquiry, unless the judge directs shorter notice to be given.

(6.) At the inquiry witnesses may be orally examined in the same manner as on the hearing of an action.

(7.) At the inquiry the judge may make such order or give such directions as he may think just.

(8.) The provisions of the Act and these Rules as to the costs of an arbitration before the judge shall apply to any such inquiry. [*New.*]

Proceedings for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e).

Application for removal of agreement from register. Act, Sched. 2, para. 9, proviso (e). Form 42.

50.—(1.) An application to the judge by or on behalf of any party for the removal from the register of the record of a memorandum of an agreement under proviso (e) to paragraph 9 of the second schedule to the Act shall be made in court on notice in writing: and the provisions of Rule 48 shall apply to the proceedings on such application.

Notice where inquiry directed by judge. Form 43.

(2.) If it appears to the judge on a report by the registrar without such application as in the last preceding paragraph mentioned that the record of a memorandum of an agreement should be removed from the register pursuant to the said proviso, the registrar shall send notice to the parties to the agreement according to the form in the Appendix, requiring them to attend on a day to be named in the notice, when the matter will be inquired into by the judge.

(3.) Such notice shall be sent and the inquiry held in accordance with the provisions of the last preceding Rule, and the provisions of that Rule shall apply to any such inquiry.

Certificate under Section 1, Sub-section 4.

Certificate under Act, sect. 1, sub-sect. 4. Form 44.

51.—(1.) Where an action is brought in the County Court to recover damages independently of the Act for injury caused by any accident, and the court proceeds under sub-section 4 of section 1 of

the Act, the certificate given by the court shall be according to the form in the Appendix.

(2.) The registrar shall, on receiving a certificate given by any other court under the said sub-section, record the same in like manner as if such certificate were an award made by the judge. [*Old Rule* 48.]

Summoning Medical Referee as Assessor under Schedule II., Paragraph 5.

Application for assessor, Act, Sched. 2, para. 5. Form 15.

52.—(1.) Any party to an arbitration may eight clear days at least before the day fixed for proceeding with the arbitration file with the registrar an application according to the form in the Appendix, requesting the judge to summon a medical referee to sit with him as an assessor under paragraph 5 of the second schedule to the Act.

Assessor to be summoned if judge approves.

(2.) On the receipt of an application for an assessor the registrar shall forward a copy of the same to the judge, who if he thinks fit shall return the same with his approval, and thereupon the registrar shall forthwith summon an assessor.

Notice where judge does not approve. Form 16.

(3.) If the judge does not think fit that an assessor shall be summoned, notice thereof shall be given by the registrar to the applicant, according to the form in the Appendix.

Summoning of assessor if judge approves or so directs.

(4.) If the judge thinks fit, either on the application of any party to an arbitration or on his own motion, to summon a medical referee to sit with him as an assessor, the registrar shall forthwith summon one of the medical referees appointed by the Secretary of State for the area comprising the district of the court in which the arbitration is pending, by sending to such medical referee by post a summons according to the form in the Appendix.

Form 17.

Where assessor fails to attend.

(5.) If at the time and place appointed for the arbitration the medical referee summoned does not attend, the judge may either proceed with the arbitration without the assistance of an assessor, or he may adjourn the hearing. [*New.*]

See County Court Rules, Order XXI., Rules 7, 8, 10, 11, as to assessors.

Appointment of Medical Referee to Report under Schedule II., Paragraph 15.

Appointment of medical referees to report under Act, Sched. 2, para. 15.

53.—(1.) Subject to and in accordance with regulations made by the Secretary of State and the Treasury under paragraph 15 of the second schedule to the Act, the judge may submit to a medical referee for report any matter which seems material to any question arising in an arbitration.

(2.) When any matter is submitted as aforesaid, the judge may, subject to and in accordance with such regulations, order the injured workman to submit himself for examination by the medical referee; and it shall be the duty of the workman, on being served with such order, to submit himself for examination accordingly. *Rule* 25.]

Application for Reference to Medical Referee under Schedule 1., Paragraph 15.

54.—(1.) With respect to applications to the registrar pursuant to paragraph 15 of the first schedule to the Act to refer any matter to a medical referee, the following provisions shall have effect. Application for reference to a medical referee under Act, Sched. 1, para. 15.

(2.) An application to the registrar to refer any matter to a medical referee shall be made in writing, and shall contain a statement of the facts which render the application necessary, according to the form in the Appendix, and shall be accompanied by a copy of the report of the medical practitioner who has examined the workman either on behalf of the employer or on the selection of the workman. The application shall be signed by or on behalf of both parties; and the applicant shall file copies of the application and reports for the use of the medical referee. Form 48.

(3.) On the hearing of the application the registrar shall refer the matter to one of the medical referees appointed for the area comprising the district of the court: and shall forward to such medical referee by registered post one of the filed copies of the application and reports, with an order of reference according to the form in the Appendix. Form 49.

(4.) The registrar shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State. Form 50.

(5.) Before making such order the registrar shall inquire whether the workman is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition shall by the order direct him to attend at such time and place as the referee may fix, and if satisfied that he is not in a fit condition to travel shall so state in the order of reference; and it shall be the duty of the workman, on being served with the order, to submit himself for examination accordingly.

(6.) The registrar shall deliver or send by registered post to each party a copy of the order of reference, and shall send to the workman a copy of the order directing him to submit himself for examination.

(7.) The medical referee shall forward his certificate in the matter to the registrar by registered post.

Form 51.

(8.) On the receipt of the certificate of the medical referee the registrar shall inform the parties by post that it has been received, and shall permit any party to inspect the same during office hours, and shall on the application and at the cost of either party furnish him with a copy of the certificate, or allow him to take a copy thereof.

(9.) The fee payable by the applicant shall be calculated at the rate of one shilling in the pound on 26 times the amount of the weekly payments claimed by or payable to the workman, so that the total fee shall not exceed one pound.

(10.) The costs of any application to the registrar, including the fee paid under the last preceding paragraph, may be allowed as costs in any subsequent arbitration for the settlement of the weekly payment to be made to the workman, or, where the application is made after the weekly payment has been settled, as costs in any subsequent arbitration as to the review of such weekly payment. [*New.*]

Suspension of Proceedings or Weekly Payments on Refusal to Submit to Examination under Schedule I., Paragraph 4, Paragraph 14, or Paragraph 15.

Application to stay proceedings or suspend weekly payments on refusal of workman to submit to examination under Act, Sched. 1, para. 4, para. 14, or para. 15.

55.—(1.) In any case in which a workman has given notice of an accident, or is receiving weekly payments under the Act, and the employer alleges that the workman refuses to submit himself to medical examination in accordance with paragraph 4, paragraph 14, or paragraph 15 of the first schedule to the Act, or in any way obstructs such examination, the employer may apply for a suspension of the right to compensation and to take or prosecute any proceedings under the Act in relation to compensation, or of the right to the weekly payments, until such examination has taken place, in accordance with this Rule.

(2.) Where proceedings are pending before a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3.) Where the workman has given notice of an accident, but no proceedings are pending, or proceedings are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(4.) Where the workman is receiving weekly payments under an award, memorandum, or certificate, then

(a) if proceedings for the review of the weekly payment are pending before a committee or an arbitrator agreed on by the

parties, the application shall be made to such committee or arbitrator;

(b) if no proceedings for review are pending, or if proceedings for review are pending before the judge or an arbitrator appointed by him, the application shall be made to the judge.

(5.) Where the application is to be made to the judge, it may be made in or out of court in accordance with Rule 48; and the provisions of the said Rule shall apply to the proceedings on such application, with the following modification:— Form 52.

(a) The notice shall be served on the workman or his solicitor five clear days before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

[*Substituted for old Rule* 50.]

Payment into Court and Investment and Application of Money payable in Case of Death. Schedule I., Paragraph 5.

56.—(1.) Where any payment in the case of death is to be paid into the County Court pursuant to paragraph 5 of the first schedule to the Act, the following provisions shall have effect. Payment into court, investment, and application of payment in case of death. Act, Sched. 1, para. 5.

(2.) Where any money is to be paid into court under an award made by the judge or an arbitrator appointed by him, payment shall be made in accordance with the directions contained in the award.

(3.) In any other case payment shall be made into the court in which the memorandum of the decision, award, or agreement under which the money is to be paid, or the certificate under which the money is to be paid, has been or is to be recorded.

(4.) Where money is to be paid into court under the last preceding paragraph, the party paying the same shall lodge with the registrar a præcipe in duplicate according to the form in the Appendix, annexing to one copy of the præcipe a form of receipt, and the registrar, on the receipt of the sum paid in, shall sign the receipt and return the same to the party making the payment; and the party making the payment shall forthwith give notice to the persons interested in the sum paid in of such payment having been made. Form 53.

(5.) If all questions as to who are dependants and the amount payable to each dependant have been settled by agreement or arbitration before payment into court, the sum paid into court shall be allotted between the dependants in accordance with the agreement or award, and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court

for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(6.) If such questions have not been settled before payment into court, then

(a) If all the persons interested in the sum paid into court agree to leave the application thereof to the court, the amount paid into court shall, on application by or on behalf of such persons, be invested, applied, or otherwise dealt with by the court for the benefit of the persons entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(b) If any question arises as to who is a dependant or as to the amount payable to any dependant, or otherwise as to the application of the sum paid into court, such question shall be settled by the court by arbitration in accordance with these Rules; and the amount allotted to each dependant shall be invested, applied, or otherwise dealt with by the court for the benefit of the person entitled thereto in accordance with paragraph 5 of the first schedule to the Act.

(7.) Where any question is settled by the court by arbitration in accordance with the last preceding paragraph, an application for the investment or application of any sum allotted to any person on such arbitration may be made at or immediately after the hearing of the arbitration.

(8.) Where application is not so made, or in any other case coming within paragraph 5 of the first schedule to the Act, an application for the investment e application of the sum paid into court, or the amount allotted to any person, may be made without petition, and the judge, on such evidence of title and identity as he may think necessary, may make such order under paragraph 5 of the first schedule of the Act and this Rule as he may think fit.

(9.) Every order for the investment or application of money paid into court shall reserve liberty to the parties interested apply to the court as they may be advised.

[*Conf.* Order IX., Rule 22.]

(10.) Where any sum allotted to any person under paragraph of the first schedule to the Act or this Rule is ordered to be paid out to or applied for the benefit of the person entitled thereto, by weekly or other periodical payments, such payments may be made to the person entitled to receive the same either at the office of the registrar, or, on the written request of such person, by crossed cheque or Post Office order addressed to such person and forwarded by registered post letter, payment by post being in all cases at the cost and risk of the person requesting the same. [*Substituted for old Rule* 59.]

Payment into Court and Application of Weekly Payments payable to Person under Legal Disability. Schedule I., Paragraph 7.

57.—(1.) An application under paragraph 7 of the first schedule to the Act for an order that a weekly payment payable under the Act to a person under any legal disability shall during the disability be paid into court may be made either by the person liable to make such payment, or by or on behalf of the person entitled to such payment.

Application for payment into court of weekly payment to person under legal disability.
Act, Sched. 1, para. 7.

(2.) If the weekly payment is awarded by the judge, the application may be made at or immediately after the hearing of the arbitration.

(3.) In any other case the application may be made in or out of court on notice in writing, which shall be served on the other party or his solicitor five clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice; and the provisions of Rule 48 shall apply to any such application.

Form 54.

(4.) Where any weekly payment is ordered to be paid into court, the sums paid in shall be paid out by the registrar to or otherwise applied for the benefit of the person entitled thereto in such manner as the judge shall direct; and the provisions of the last preceding Rule as to the payment out or application of sums by weekly or other periodical payments shall apply. [*New.*]

Application for Variation of Order under Schedule I., Paragraph 9.

58.—(1.) An application for the variation of an order of the court under paragraph 9 of the first schedule to the Act may be made by any person interested.

Application for variation of order.
Act, Sched. 1, para. 9.

(2.) The application shall be made in court on notice in writing, stating the circumstances under which the application is made, and the relief or order which the applicant claims.

Form 55.

(3.) The notice shall be filed with the registrar, and notice thereof shall be served on all persons interested in accordance with Rule 48; and the provisions of that Rule and of Rule 56 shall apply to the proceedings on such application. [*New.*]

Investment and Application of Lump Sum paid in Redemption of Weekly Payment. Schedule I., Paragraph 17.

Investment and application of sums paid in redemption of weekly payments. Act, Sched. 1, para. 17.

59. Where pursuant to paragraph 17 of the first schedule to the Act a lump sum payable for the redemption of any weekly payment is ordered by a committee or an arbitrator, or by the judge, to be invested or applied for the benefit of the person entitled thereto, such sum shall be paid into court: and the provisions of paragraph 5 of the first schedule to the Act and of Rule 56 shall apply to the investment and application of such lump sum. [*New.*]

Proceedings where Workman receiving Weekly Payment intends to cease to reside in United Kingdom. Schedule I., Paragraph 18.

Where workman receiving weekly payment intends to cease to reside in United Kingdom. Act, Sched. 1, para. 18.

60.—(1.) Where a workman receiving a weekly payment intends to cease to reside in the United Kingdom, the following provisions shall have effect under paragraph 18 of the first schedule to the Act.

(2.) The workman may apply to the registrar to refer to a medical referee the question whether the incapacity of the workman resulting from the injury is likely to be of a permanent nature.

Form 56.

(3.) The application shall be made on notice in writing, according to the form in the Appendix, which shall be filed with the registrar, and shall be accompanied by a copy of the report of any medical practitioner who has examined the workman on the selection of the workman; and a copy of the application and of such report (if any) shall be served on the employer or his solicitor in accordance with Rule 48; and the applicant shall file a copy of the application and of the report (if any) for the use of the medical referee.

(4.) If the workman has been examined by a medical practitioner on behalf of the employer, the employer may at or at any time before the hearing of the application furnish the workman with a copy of the report of that practitioner as to the workman's condition, and file a copy of the report for the use of the medical referee.

Form 57.

(5.) On the hearing of the application the registrar, on being satisfied that the applicant has a *bonâ fide* intention of ceasing to reside in the United Kingdom, shall make an order referring the question to a medical referee; and if he is not so satisfied, he may refuse to make an order, but in that case he shall, if so requested by the applicant, refer the matter to the judge, who may make such order or give such directions as he may think fit.

(6.) If the registrar or the judge makes an order referring the question to a medical referee, he shall also make an order directing the workman to submit himself for examination by the medical referee, subject to and in accordance with any regulations made by the Secretary of State; and the provisions of paragraphs 3 to 6 of Rule 54 shall with the necessary modifications apply. Form 50.

(7.) The medical referee shall forward his certificate in the matter to the registrar by registered post, specifying therein the nature of the incapacity of the workman, and whether the same is total or partial; and the registrar shall thereupon proceed in accordance with paragraph 8 of Rule 54. Form 51.

(8.) Where the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature, the registrar shall on application furnish the workman

(a) with a copy of the certificate of the medical referee, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(b) with a copy of the award, memorandum, or certificate under which the weekly payment is payable, sealed with the seal of the court and certified by the registrar in his own handwriting to be a true copy; and

(c) with a certificate of identity according to the form in the Appendix; and Form 58.

(d) with a notice according to the form in the Appendix, annexing thereto forms of certificate and declaration according to the forms in the Appendix; Forms 59, 60, 61.

and shall procure from the workman a specimen of his signature, and file the same for reference.

(9.) A workman who desires to have the weekly payments payable to him remitted to him while residing out of the United Kingdom shall at intervals of three months from the date to which such payments were last made submit himself to examination by a medical practitioner in the place where he is residing, and shall produce to him the copy of the certificate of the medical referee and the certificate of identity furnished under the last preceding paragraph, and shall obtain from him a certificate in the form in the Appendix that the incapacity of the workman resulting from the injury continues; and such certificate shall be verified by declaration by the medical practitioner, in the presence of the workman, before a person having authority to administer an oath. Form 60.

(10.) The workman shall also make a declaration of identity according to the form in the Appendix before a person having authority to administer an oath, producing to such person the copy and certificate above mentioned, and the certificate of the medical practitioner by whom he has been examined. Form 61.

(11.) The workman shall forward the certificate and declaration in the two last preceding paragraphs mentioned to the registrar, with a request, according to the form in the Appendix, for the transmission to him of the amount of the weekly payments due to him, specifying the place where and the manner in which the amount is to be remitted, which request shall be signed by the workman in his own handwriting.

Form 62.

(12.) On receipt of the certificate, declaration, and request the registrar shall examine the same, and may if not satisfied that the same are in order return the same for correction.

(13.) If the registrar is satisfied that the certificate, declaration, and request are in order, or when they are returned to him in order, he shall send to the employer a notice according to the form in the Appendix, requesting him to forward the amount due; and the employer shall thereupon forward the amount to the registrar, who shall remit the same, less any fees payable to the registrar and the costs of transmission, to the workman at the address and in the manner requested by him, such remittance being in all cases at the cost and risk of the workman. [*New.*]

Form 63.

See also Rules 18, 23, 24, 32 (7).

Costs (*a*).

Costs.

Act, Sched. 2, para. 7.

61.—(1.) Any costs of and incident to an arbitration and proceedings connected therewith directed by a committee or by an arbitrator (whether agreed on by the parties or appointed by the judge), or by the judge, to be paid by one party to another shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the committee, arbitrator, or judge shall direct; and in default of such direction shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court: and the statutory provisions and Rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections and review of taxation by the registrar, shall apply accordingly. Proceedings in an arbitration shall be within Order LIII., Rules 7 and 8, and the word "judge" in those Rules shall include a committee and an arbitrator. [*Old Rule* 33 (1.); *Rule* 7, *Nov.*, 1906.]

Order LIII., Rules 7, 8.

ALLOWANCE OF COSTS BY JUDGE.

Order LIII., Rule 7.

The order of the judge required for the allowance of any of the following items in the scales, viz., items 3, 31, 70, 86, 91, 92, 93, 94 and 95, or for the allowance of any particular costs under any of the County Court Rules, shall

(*a*) See *ante*, p. 332, and also Rules 18, 23, 24, 32 (7).

be a special order made upon consideration of the facts of the particular case, and not a general order; and the application for such allowance, or for any certificate under sect. 119 of the Act, shall be made at or immediately after the trial or hearing; and if not so made shall not afterwards be entertained unless the judge for good cause otherwise orders.

The judge may, in his discretion, in any action under sect. 64 of the Act, or under the Employers' Liability Act, any action or matter remitted from the High Court, any action or matter commenced under the Admiralty or equitable jurisdiction of the court, or any action of ejectment or in which title to any corporeal or incorporeal hereditaments comes in question, order that any of the following items mentioned in the scale of costs shall be allowed to the party in whose favour the order is made in addition to or in substitution for, as the case may be, the costs to which he would otherwise be entitled, viz., items 31, 70, 86 and 93. **Rule 8.**

Item.	Instances in which a Special Order of the Judge is required.	A.	B.	C.
		£ s. d.	£ s. d.	£ s. d.
31	Preparation of minutes of fact or argument where no counsel employed.	—	1 1 0	2 2 0
70	Attending court conducting cause without counsel instead of item 69.	1 1 0	2 2 0	3 3 0
86	In courts exceeding 25 miles from Charing Cross where there is no local bar within 20 miles, further counsel's fee not exceeding.	—	2 4 6	2 4 6
93	Fee to counsel for settling petition particulars, statement of defence, interrogatories, or other matters required in the course of the action or matter.	—	1 3 6	1 3 6
				2 4 6
	In any action or proceeding:—			
3	Drawing petition if charge exceeds....	0 10 0	1 5 0	1 5 0
91	Fee to counsel with brief on any interlocutory motion or application.	—	1 3 6	2 4 6
92	Fee to counsel with brief before an arbitrator, or on an inquiry or Admiralty reference before registrar, or on an examination of witnesses under Order XVIII., Rule 18 (a).		2 4 6	3 5 6
94	Fee to counsel for advising on evidence.	—	1 3 6	1 3 6
				2 4 6
95	Plans, charts and models for use of judge at trial not exceeding in the whole.	1 1 0	2 2 0	3 3 0

(2.) Where the subject-matter of an arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of costs, shall be considered to be the amount of the subject-matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge.

(3.) The committee, arbitrator, or judge, in dealing with the question of costs, may take into consideration any offer of compensation proved to have been made on behalf of the employer.

Where a defendant has succeeded there is no jurisdiction to make him pay the costs of an unsuccessful plaintiff. (*Foster* v. *G. W. R.*, 8 Q. B. D. 515; *Dicks* v. *Yates*, 18 C. D. 76.)

(4.) Where any workman is examined by a medical referee on a reference under paragraph 15 of the first schedule to the Act, and the certificate of the referee is used in any subsequent arbitration, any reasonable travelling and other expenses incurred by the workman in obtaining such certificate (if not otherwise provided for) may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration.

(5.) Where a workman is ordered to submit himself for examination by a medical referee appointed to report under paragraph 15 of the second schedule to the Act, any reasonable expenses incurred by such workman in travelling to attend on such referee for examination may, by order of the committee, arbitrator, or judge, be allowed as costs in the arbitration. [*Old Rule* 33.]

Taxation of costs awarded by committee or arbitrator agreed on by parties.

62. Where any costs are awarded by a committee or an arbitrator agreed on by the parties, it shall be the duty of the registrar of the court in which a memorandum of the decision of the committee or arbitrator is recorded pursuant to paragraph 9 of the second schedule to the Act, on application made to him, to tax such costs, and to enter in the register the amount of such costs allowed on taxation; and such entry shall be deemed to be part of such memorandum, and shall be enforceable accordingly. [*Old Rule* 34.]

Review of Taxation by Judge.

Review of taxation.

63.—(1.) An application to the judge to review any taxation of costs shall be made on notice in writing, which shall be served on the opposite party two clear days at least before the hearing of the application, unless the judge or registrar gives leave for shorter notice.

(2.) Such application shall be heard and determined upon the evidence which has been brought in before the registrar, and no

further evidence shall be received on the hearing thereof unless the judge otherwise directs.

(3.) The costs of and incident to the application shall be in the discretion of the judge.

(4.) The result of such review shall be entered in the register. [*New.*]

See County Court Rules, Order LIII., Rule 47; Order XII., Rule 11 (1, 4).

As to authority of solicitor to receive costs payable by adverse party.

64. Where any party to whom costs are awarded acts by a solicitor, such solicitor shall have the same authority to take out of court or receive any sum paid into court or payable in respect of such costs by the party against whom such costs are awarded as he would have if such costs were awarded in an action. [*Rule 3, Sept.*, 1899.]

Costs of Solicitor or Agent under Schedule II., Paragraph 14.

Application to determine costs payable to solicitor or agent. Act, Sched. 2, para. 14.

65.—(1.) The following provisions shall apply to an application under paragraph 14 of the second schedule to the Act for the determination of the amount of costs to be paid to the solicitor or agent of a person claiming compensation under the Act.

(2.) Where the sum awarded as compensation has been awarded by a committee or an arbitrator agreed on by the parties, the application shall be made to such committee or arbitrator.

(3.) Where the sum awarded as compensation has been awarded by the judge or by an arbitrator appointed by him, the application may be made—

(a) to the judge or arbitrator at or immediately after the hearing of the arbitration; or

(b) at a subsequent date, but in that case it shall be made only to the judge.

(4.) Where a sum has been agreed on as compensation, the application shall be made to the judge.

(5.) An application made to the judge, other than an application under paragraph 3 (a) of this Rule, shall be made in court on notice in writing in accordance with Rule 48. Form 64.

(6.) Such notice shall be served on the person for whom the solicitor or agent acted in accordance with the said Rule, and the provisions of the said Rule shall apply to the proceedings on such application.

(7.) On the hearing of any application under this Rule, the committee, arbitrator, or judge may award costs to the solicitor or agent, and may make an order declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded

as compensation to such person, or to be entitled to deduct such costs from any such sum, or may make such order or give such directions as may be just.

(8.) Any costs awarded to a solicitor or agent on any such application shall, in default of agreement between the parties as to the amount of such costs, be taxed according to such one of the scales of costs applicable to actions in the County Court as the committee, arbitrator, or judge shall direct; and in default of such direction such costs shall be taxed according to the scale which would be applicable if the proceeding had been an action in the County Court; and the statutory provisions and Rules for the time being in force as to the allowance and taxation of costs in such actions, and as to objections and review of taxation by the registrar, shall apply accordingly; and any taxation shall be subject to review by the judge according to Rule 63.

(9.) Where the subject-matter of the arbitration is not a capital sum, the committee, arbitrator, or judge shall determine what, for the purpose of the allowance and taxation of such costs, shall be considered to be the amount of the subject-matter of the arbitration; and in default of such determination the amount shall be fixed by the registrar by whom the costs are to be taxed, subject to review by the judge. [*Old Rule* 46; *amended by Rule* 4, *Sept.*, 1899.]

Provisions as to order declaring lien, &c.

66. Where an order is made by a committee, arbitrator, or judge awarding costs to a solicitor or agent, and declaring such solicitor or agent to be entitled to recover such costs from the person for whom he acted, or to be entitled to a lien for such costs on any sum awarded or agreed as compensation, or to be entitled to deduct such costs from any such sum, the following provisions shall apply:—

(a) The registrar shall, on application made to him, tax such costs.

(b) A copy of the order, and, when the amount to which such solicitor or agent is entitled has been ascertained by taxation, a memorandum of such amount, shall, at the request and cost of the solicitor or agent, be issued by the registrar for service on the party liable to pay the sum awarded or agreed as compensation; and service thereof may be effected on such party in accordance with Rule 15.

(c) A memorandum of such order, and when such amount has been ascertained a memorandum of such amount, shall be recorded in the register in which the memorandum or award under which the sum awarded as compensation is payable is recorded, and such last-mentioned memorandum or award shall have effect subject to such order and memorandum.

(d) The party liable to pay such compensation shall on demand

pay to the solicitor or agent the amount to which he is entitled, but so that such party shall not be liable to pay any amount in excess of that which he is liable to pay for compensation, or to pay such amount by any other instalments than those by which he is liable to pay such compensation.

(e) If the party liable to pay such compensation fails on demand to pay any amount which he is liable to pay to such solicitor or agent, the judge may, on application made to him on notice to such party in accordance with Rule 48, and on proof of the order having been served on and demand for payment made to such party, order such party to pay such sum; and in default of payment the judge may order execution to issue to levy such amount.

(f) Payment made by or execution levied on the party liable to pay such compensation shall be a valid discharge to him, as against the party entitled to such compensation, to the amount paid or levied.

(g) Where the sum awarded as compensation has been paid into court, the amount to which the solicitor or agent is entitled shall be paid to him out of such sum. [*Old Rule* 47; *amended by Rule* 5, *Sept.*, 1899.]

Execution.

Execution. Form 65. [*Conf.* Order XXV., Rule 8.]

67.—(1.) When a party liable to pay compensation or costs under any award, memorandum, or certificate has made default in payment of the amount awarded, or where payment is to be made by instalments, of any instalment, execution may issue against his goods without leave for the amount in payment of which he has made default.

(2.) Where such sum is not payable into court, the party applying for execution shall satisfy the registrar, by affidavit or otherwise, as to the amount in payment of which default has been made. [*Old Rule* 49.]

Order XXV., Rule 11.

(3.) Where the parties liable to pay compensation or costs under any award, memorandum, or certificate are a firm, the provisions of Order XXV., Rule 11, shall, with the necessary modifications, apply to execution under this Rule. [*New.*]

Proceedings under Debtors' Act, 1869, *Section* 5.

Proceedings under Debtors' Act, 1869. 32 & 33 Vict. c. 62, s. 5.

68.—(1.) Where proceedings by way of judgment summons under section 5 of the Debtors' Act, 1869, are taken against a party liable to pay compensation or costs under any award, memorandum, or certificate, who has made default in payment of the amount awarded, or, where payment is to be made by

instalments, of any instalment, the County Court Rules for the time being in force as to the committal of judgment debtors shall, with any necessary modifications, apply to such proceedings: Provided, that the court shall not alter the terms or mode of payment of any sum to become payable in future under any award, memorandum, or certificate, otherwise than by consent, or under paragraph 16 of the first schedule to the Act.

(2.) Where the amount in payment of which default has been made is not payable into court, the party applying for a judgment summons shall satisfy the court, by affidavit or otherwise, as to the amount in payment of which default has been made.

Form 66. 3. A judgment summons issued under this Rule shall be according to the form in the Appendix. [*Rule* 8, *Nov.*, 1900.]

4. Where the parties liable to pay compensation or costs are a firm, the provisions of the County Court Rules as to judgment summonses on a judgment or order against a firm shall, with the necessary modifications, apply to proceedings by way of judgment summons under this Rule. [*Nov.*]

Other Proceedings for Enforcement of Award, Memorandum, or Certificate.

Other proceedings for enforcement of award, &c.

69. The County Court Rules for the time being in force as to proceedings for the enforcement of or the recovery of money due under judgments or orders of the County Court otherwise than by execution or committal shall, with the necessary modifications, apply to proceedings for the enforcement of or the recovery of money due under any award, memorandum, or certificate. [*Rule* 9, *Nov.*, 1900.]

Setting aside Award or Order improperly obtained

Rules as to new trials not to apply.

70.—(1.) Notwithstanding anything in these rules or the statutory provisions and Rules relating to new trials actions in the County Court shall not apply to arbitrations under the Act.

When award or order may be set aside or varied.

(2.) Where the judge is satisfied—

(a) that any award, or any order as to the application of any amount awarded or agreed upon as compensation, made by the judge or by an arbitrator appointed by him, has been obtained by fraud or other improper means; or

(b) that any person has been included in any award or order as a dependant who is not in fact a dependant as defined by the Act; or

(c) that any person who is in fact a dependant as defined by the Act has been omitted from any award or order,

the judge may set aside or vary the award or order, and may make such order (including an order as to any sum already paid under the award or order) as under the circumstances he may think just.

(2) An application to set aside or vary an award or order under this Rule shall be made in court on notice in writing, and the provisions of Rule 48 shall apply to the proceedings on such application.

(3) An application to set aside or vary an award or order under this Rule shall not be made after the expiration of six months from the date of the award or order, except by leave of the judge; and leave shall not be granted unless the judge is satisfied that the failure to make the application within such period was occasioned by absence from the United Kingdom, or other reasonable cause. [*New*.]

The power to remit an award to the arbitrator has been held to be a power to grant a rehearing (*Re Hopper*, (1865) 2 H. & C. 602; 2 L. T. 805); but now by Rule 28 (2) the judge may modify such directions as this Rule gives to the provisions of Schedule II., 9 (c), so that evidence properly obtained before the award can now practically be given as the judge may think fit to do so. See also sect. 11 of Arbitration Act, 1889, as to setting aside awards, and sect. 2, sub-sect. 1 (b), of Act as to time for proceedings and excuses for delay.

Appeals.

Appeals. Act. Sched. 2, para. 1. [*Conf.* Ord. XXXII., Rule 1.]

71. Appeals under paragraph 4 of the schedule to the Act shall be had in accordance with the provisions of the Rules of the present Court relating thereto. [*Old Rule*.]

Order LVIII., Rule 20.

The High Court Rules, Order LVIII., Rule 20, governing such appeals, are as follows:—

The following provisions shall apply to appeals to the Court of Appeal from decisions of judges of the County Courts on questions of law under the Workmen's Compensation Act, 1897, and appeals under the Agricultural Holdings Act, 1900:—

(a) Every such appeal shall be by notice of motion in accordance with Order LIX., Rule 10, and such notice of motion shall be served, and the appeal set down under Order LVIII., Rule 8, within the time limited by Order LIX., Rule 12.

(b) It shall be the duty of the party appealing to apply to the judge of the County Court for a signed copy of the note made by him of any question of law raised before him, and of the facts in evidence in relation thereto and of his decision thereon, and of his decision on the question or matter submitted to him, and to furnish such

copy for the use of the Court of Appeal; and such copy shall be used and received at the hearing of the appeal. If such notes are not produced, the Court of Appeal shall have power to hear and determine the appeal upon any other evidence or statement of what occurred before the judge of the County Court, which the Court of Appeal may deem sufficient.

(c) Order LIX., Rules 14 and 16, shall apply to any such appeal, with substitution of the Court of Appeal for the High Court.

(d) Subject to the foregoing provisions, the Rules for the time being in force with respect to appeals from the High Court to the Court of Appeal, shall, so far as practicable, apply to and govern appeals under the said Act to the Court of Appeal.

Order LIX., Rule 10. Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered.

Order LVIII., Rule 8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

Order LIX., Rule 12. The notice of motion shall be served, and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of: such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given.

Order LIX., Rule 11. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the inferior court shall so order, or unless within ten days after the decision a deposit shall be made of or security given, to the satisfaction of such inferior court for a sum to be fixed by the said court, not exceeding the amount of the money or the value of the property affected by the judgment, order, or finding appealed from.

Order LIX., Rule 16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

Deposit of order of Court of Appeal with registrar, and procedure thereon. 72.—(1.) When the Court of Appeal has given judgment on any appeal, any party may deposit the order of the Court of Appeal, or an office copy thereof, with the registrar; and the registrar shall file such order or copy, and shall transmit a copy thereof to the judge; and such order shall have the same effect as if it had been a decision of the judge.

(2.) If such order has the effect of an award, decision, or order in the matter in favour of any party, such order shall be served and recorded, and may be proceeded on, in the same manner as if it had been an award, decision, or order of the judge.

(3.) If such order be to the effect that an award be made or a decision given or order made in favour of any party, the judge shall make such award or give such decision or make such order accordingly.

(4.) If such order directs or involves a re-hearing or further hearing of an arbitration or special case or other matter, the judge shall as soon as conveniently may be appoint a day and hour for such re-hearing or further hearing, and shall instruct the registrar to give notice thereof forthwith to the parties.

(5.) Generally the judge shall make such award or give such decision or make such order and give such directions and take or direct to be taken such proceedings in the matter, as may be necessary to give effect to the order of the Court of Appeal. [*Old Rule* 37.]

In what Court Proceedings may be taken.

73.—(1.) Any matter which under the Act or these Rules is to be done in a County Court, or by to or before the judge or registrar of a County Court, shall be done in the County Court, or by to or before the judge or registrar of the County Court, In what court proceedings may be taken. Act, Sched. 2, para. 11.

(i) of the district in which all the parties concerned reside; or

(ii) if the parties concerned reside in different districts,

(a) of the district in which the accident out of which the matter arose occurred; or

(b) in the case of any such workman as in paragraph 1 of Rule 39 mentioned, of the district in which the workman was last employed in the employment to the nature of which the disease was due; or

(c) if the accident out of which the matter arose occurred at sea,

(1) of the district in which the ship shall be when the matter is to be done; or

(2) of the district comprising the port of registry of the ship; or

(3) of the district in which the workman or the dependants of the workman by whom or on whose behalf the matter is to be done, or some or one of them, resides or reside;

without prejudice to any transfer in manner provided by these Rules.

Detention of ships.
5 Edw. 7, c. 10. Act, s. 11.

(2.) An application for an order for the detention of a ship may, subject to the provisions of the Rules for the time being in force under the Shipowners' Negligence (Remedies) Act, 1905, be made to the judge of any court.

Proceedings against persons giving security.
5 Edw. 7, c. 10. Act, s. 11.

(3.) Where proceedings by way of arbitration for the recovery of compensation are taken against the persons giving security pursuant to the Shipowners' Negligence (Remedies) Act, 1905, or section 11 of the Act and Rules 37 and 38, such proceedings may be commenced

(i) in the County Court of the district in which all the parties concerned reside; or

(ii) if the parties concerned reside in different districts,

(a) in the County Court of the district in which the accident occurred; or

(b) if the accident occurred at sea,

(1) in the County Court of the district in which the vessel is or was detained, or in which the order for detention was made or applied for; or

(2) in the County Court of the district in which the workman or the dependants of the workman, or some or one of them, resides or reside;

without prejudice to any transfer in manner provided by these Rules. [*New.*

Proceedings in one Court as to Subject-matter of Award, Memorandum or Certificate recorded in another Court.

Filing of certified copy of memorandum, &c. recorded in one court under Act, Sched. 2, para. 9, before taking subsequent proceedings in another court.

74. Where an award, or a memorandum under paragraph 9 of the second schedule to the Act, or a certificate under sub-section 4 of section 1 of the Act, has been recorded in any court, and any party desires to take any subsequent proceedings with reference to the subject-matter of such award, memorandum, or certificate in any other court, he shall before taking such proceedings obtain from the registrar of the first-mentioned court a certified copy of such award, memorandum, or certificate, and shall file the same in the court in which he desires to take proceedings, and the registrar of such last-mentioned court shall record the same as if it had been an award made in the court. [*Old Rule* 60.]

Transfer of Proceedings.

Transfer.

75. If the judge is satisfied by any party to any matter under the Act pending in his court that such matter can be more conveniently proceeded with in any other court in England,

Scotland, or Ireland, he may order such matter to be transferred to such other court; and thereupon the registrar shall forthwith transmit by registered post to the registrar of the court to which such matter is transferred all original documents filed in such matter, and a certified copy of all records made with reference to such matter, and shall transfer to such last-mentioned court any money invested in his name as registrar: and thenceforth such matter shall be proceeded with in the court to which it is transferred in the same manner as if it had originally been commenced therein. The provisions of Order VIII., Rule 9, shall apply to any such transfer or application for a transfer. [*Old Rule* 61.] Order VIII., Rule 9.

Where application is intended to be made for the transfer of any action, matter, or proceeding under sect. 85 of the Act, or under the last preceding Rule, or under Order XXXIII., Rule 19, three clear days' notice in writing of such intended application shall be given by the applicant to the registrar of the court in which such action, matter, or proceeding is pending, and to all parties who may be affected by such application; but the judge may at any time, by consent of all parties, or without such consent if he thinks fit, order a transfer, although this Rule has not been complied with. When a transfer is ordered the judge may make such order as to the costs incurred before or occasioned by such transfer as he may think fit; and a certified copy of the proceedings shall be transmitted in accordance with sect. 85 of the Act, and the provisions of that section shall apply. The costs of such copy and the costs of transmission shall be paid for in the first instance by the party on whose application the transfer has been made, or, if the transfer is made by the judge without any application to transfer being made by him, such costs shall be paid for in the first instance by the plaintiff in the action, matter, or proceeding; but such payment shall be without prejudice to any question as to the party by whom such costs are ultimately to be borne. Order VIII., Rule 9.

Transfer of Money paid into Court.

76.—(1.) The provisions of the last preceding Rule shall apply to the transfer of money paid into court from one court to another pursuant to paragraph 6 of the first schedule to the Act or otherwise, and to proceedings with respect to the application of such money. Transfer of money paid into court. Act. Sched. 1, para. 6.

(2.) Where any money ordered to be transferred from one court to another is invested in the Post Office Savings Bank in the name of the registrar, such money shall be transferred into the name of the registrar of the court to which the money is ordered to be transferred in accordance with regulations to be made by the Postmaster-General with the consent of the Treasury: and where any money ordered to be transferred is not so invested it shall forthwith be so invested, and shall when invested be transferred in accordance with this Rule. [*New.*]

Filing and Service of Documents and Notices.

77.—(1.) Where any document is to be filed with the registrar under these Rules, that document may be so filed by delivering it at the office of the registrar, or by sending it by post addressed to the registrar at his office.

(2.) Where any document is to be so filed, there shall be filed with the original document as many copies of the document as there are persons to whom copies of the document or any part thereof are to be sent by the registrar, and in addition a copy for the use of the judge or arbitrator.

(3.) Where any document is under these Rules to be sent to any person by the registrar, that document may be sent by post.

(4.) Any proceeding, document, or notice which is under these Rules to be served on any party may be served on such party by the opposite party or his solicitor; and where no special provision as to the mode of service is made by these Rules, any such proceeding, document, or notice may be served on such party, or where he acts by a solicitor, on his solicitor, in manner provided by sub-sections 3 and 4 of section 2 of the Act with reference to service of notice in respect of an injury; and the provisions of Order LIV., Rule 2, shall apply to the service of any such proceeding, document, or notice. [*Old Rule* 62.]

Act, sect. 2, sub-sects. 3, 4.
Order LIV., Rule 2.

Procedure Generally.

Provisions as to parties acting by solicitors, and as to substituted service and notice in lieu of service.

78. The provisions of Order XXIII., Rule 6, Order LIV., Rules 1 and 3 to 6, and Order VII., Rule 40, as to parties acting by solicitors, and as to substituted service and notice in lieu of service, shall apply to proceedings under the Act. [*Old Rule* 63.]

Order XXIII., Rule 6.—When a party acts by a solicitor, service of any judgment or order in the nature of a decree, and of any interlocutory order, or any notice relating to any such order when directed to be served, may be made by or upon such solicitor, as the case may be.

Order LIV., Rule 1. Where by these Rules any act may be done by any party, such act may be done either in person or by his solicitor, or by an agent, where it can be legally done by an agent.

Rule 3.—Where a party acts by a solicitor, any document, notice, or proceeding required to be served by or upon such party may be served by or upon such solicitor, except in cases where by these Rules personal service upon a party is required; and service of any such document, notice, or proceeding upon such solicitor, or delivery of the same at his office, or sending the same to him by post, prepaid, shall be deemed to be good service upon the party for whom such solicitor acts, as upon the day when the same is so served or delivered, or upon which in the ordinary course of post it would be delivered. Provided that the provisions of this Rule shall not extend to any default or judgment summons nor except as provided by Order VII., Rule 12, to any ordinary summons.

Order LIV.

Rule 4.—A solicitor acting for a party in any action or matter may give notice in writing by post or otherwise to the registrar and to the other party, or his solicitor, that he is so acting, whereupon service of any document, notice, or proceeding whatsoever authorised by these Rules, to be served by or upon a solicitor so acting shall be served by or upon such solicitor accordingly, and he shall be deemed to be the solicitor acting for the party on whose behalf he has given such notice, until notice of change of solicitor has been duly given. Provided that where the plaint is entered by a solicitor acting for the plaintiff, and the particulars have been duly signed by him or on his behalf as provided by Order VI., Rule 9, or where a notice of defence, set-off, or counterclaim is signed by or on behalf of a solicitor acting for a defendant, no further notice need be given under this Rule.

Rule 5.—Where a solicitor undertakes the service of any process, he shall make the necessary copies of each process, and the registrar shall seal the same and return them to the solicitor for service.

Rule 6.—Subject to the provisions of sect. 72 of the Act, prohibiting the retainer of a solicitor as an advocate, by the solicitor acting generally in an action or matter for any party, any party who acts by solicitor may change his solicitor without any order for that purpose, but when any such change is made he shall give forty-eight hours' notice in writing to the registrar and to the other parties to the action or proceedings or the solicitors, if any, acting for them, of such change, and of the name or firm and place of business of the new solicitor, and the registrar shall file the notice given to him; but until such notice is filed and a copy thereof served, the former solicitor shall be deemed to be the solicitor of the party.

Order VII., Rule 40.—Where by reason of the absence of any party, or from any other sufficient cause, the service of any summons (other than a default or judgment summons, or a summons under the Summary Procedure on Bills of Exchange Act, 1855), petition, notice, proceeding, or document cannot be made, the Court may, upon an affidavit showing grounds, make such order for substituted or other service, or for the substitution for service of notice by advertisement or otherwise, as may be just.

Proceedings where Crown a party.

79.—(1.) In any proceedings under the Act or these Rules arising out of an injury to a workman employed by or under the Crown, in which, if the employer were a private person, such employer would be a necessary party, the head of the department by in or under which the workman was employed, or, where the department is administered by a Board or by Commissioners, such Board or Commissioners shall be made a party under his or their official title as representing the Crown.

Service of documents, &c.

(2.) In any such case any proceeding, document, or notice to be served on the head of the department, or on the Board or Commissioners, may be served on the permanent secretary to the department, subject to the provisions of these Rules as to service on parties acting by solicitors. [*New.*]

Procedure, where not

80. Where any matter or thing is not specially provided for under these Rules, the same procedure shall be followed and the

otherwise provided for.

same provisions shall apply, as far as practicable, as in a similar matter or thing under the County Courts Act, 1888, and the Rules made in pursuance of that Act. [*Old Rule* 64.]

Record of Proceedings.—Special Register.

Record of proceedings before judge or arbitrator.

Special register.

Form 67.

81. Proceedings under the Act before the judge or an arbitrator appointed by him shall be recorded in the books of the court in the manner in which other proceedings in the court are recorded; and the registrar shall also keep a special register for the purposes of the Act, in which he shall record—

(1.) A memorandum of every application made to the judge for the settlement of any matter by arbitration;

(2.) A memorandum of every appointment of an arbitrator to settle any such matter made by the judge;

(3.) A memorandum of every proceeding taken in any arbitration before the judge or an arbitrator appointed by him prior to the award;

(4.) A memorandum of every appointment of a medical referee by the judge or arbitrator, and of his report, and if a medical referee is summoned or requested to attend any proceeding in the arbitration, of such summons or request and attendance;

(5.) A memorandum of every award made by the judge, or by an arbitrator appointed by him;

(6.) A memorandum of every special case submitted to the judge, and of the proceedings and order thereon;

(7.) A memorandum of every judgment given by the Court of Appeal on any appeal;

(8.) A memorandum of every application to the court for the examination of an employer pursuant to Rule 35, paragraph 2, and of the order and proceedings thereon;

(9.) A memorandum of every application to the court for the detention of a ship pursuant to section 11 of the Act and Rules 37 and 38, and of the order and subsequent proceedings thereon;

(10.) A memorandum of every application to the judge for the appointment of an arbitrator in case of the death or refusal or inability to act of an arbitrator agreed on by the parties, and of the proceedings and order thereon;

(11.) A copy of every memorandum sent to the registrar pursuant to paragraph 9 of the second schedule to the Act, and of the report (if any) of the medical referee annexed thereto, with a note stating whether such memorandum was recorded without further proof, or after inquiry, or by order of the judge;

(12.) If such memorandum is recorded after inquiry, a memorandum of the inquiries made and of the result thereof;

(13.) If such memorandum is recorded by order of the judge, a memorandum of the application to the judge, and of the order made thereon;

(14.) If in the case of a memorandum of an agreement the registrar refers the matter to the judge, a memorandum of such reference, and of the directions of the judge, and the subsequent proceedings and order thereon;

(15.) A memorandum of the result of every taxation or review of taxation of costs under any such memorandum, or under any award or order;

(16.) A memorandum of every application to rectify the register in respect of any memorandum, and of the proceedings and order thereon;

(17.) A memorandum of every application or report with reference to the removal of the record of a memorandum of an agreement from the register, and of the subsequent proceedings and order thereon;

(18.) A memorandum of every application to the judge or arbitrator, under paragraph 14 of the second schedule to the Act, to determine the amount of costs to be paid to a solicitor or agent, and of the proceedings and order thereon, and of the result of any taxation or review of taxation under such order;

(19.) A copy of every certificate under sub-section 4 of section 1 of the Act given by the court or sent to the registrar from any other court;

(20.) A memorandum of every proceeding taken in the court for the enforcement of any award, order, memorandum, or certificate, and of the result of such proceeding;

(21.) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 15 of the first schedule of the Act, and of the order and subsequent proceedings thereon;

(22.) A memorandum of every application to the court for the suspension of the right to compensation or to take or prosecute any proceedings under the Act in relation to compensation, or of the right to weekly payments, and of the proceedings and order thereon;

(23.) A memorandum of every sum paid into court pursuant to paragraph 5 of the first schedule to the Act, or under any award, memorandum, or certificate;

(24.) A memorandum of every application made to the court with reference to any such sum, and of every order made on

such application, and of the manner in which such sum is invested, applied, or disposed of;

(25.) A memorandum of every application for the payment of any weekly payment into court, and of the proceedings and order thereon, and of the directions given as to the payment out or application of any such weekly payment;

(26.) A memorandum of every application for variation of an order of the court as to the apportionment, investment, or application of any sum paid as compensation, and of the proceedings and order thereon;

(27.) A memorandum of every application to refer a matter to a medical referee pursuant to paragraph 18 of the first schedule to the Act in the case of a workman intending to cease to reside in the United Kingdom, and of the order and the proceedings thereon; and of every certificate and declaration of identity and request for payment received from such workman, and of the proceedings thereon;

(28.) A memorandum of every application to set aside or vary an award or order under Rule 70, and of the proceedings and order thereon;

(29.) A memorandum of every certified copy given pursuant to Rule 74, or a copy of every certified copy filed pursuant to that Rule;

(30.) A memorandum of every application for transfer, and of the order thereon, and the proceedings under such order;

(31.) A memorandum of the transmission of documents and certified copies pursuant to paragraph 11 of Rule 37 or paragraphs (iii) or (iv) of Rule 38;

(32.) A memorandum of the transfer of any money paid into court to any other court;

(33.) The like memorandum as to every matter transferred, or document or certified copy transmitted or money transferred to the court, as would have been recorded as to such matter, document, or money if it had been originally commenced and prosecuted in or transmitted to or paid into the court;

(34.) A memorandum of any other matter which the judge shall order to be recorded with reference to any matter brought into or proceeding taken in the court under the Act. [*Old Rule* 65.

References to Medical Referees.

References to medical referees.

82.—(1.) Where a medical referee is summoned as an assessor, or any matter is referred to a medical referee, such referee shall be summoned or the matter shall be referred subject to and in accordance with any regulations made by the Secretary of State

and the Treasury; and any such regulations shall so far as they affect the County Court or an arbitrator appointed by the judge of the County Court, and proceedings in the County Court or before any such arbitrator, be deemed to be Rules of Court, and shall have effect accordingly. [*Old Rule* 25 (2.).]

References under Act, s. 8 1) (*f*).

(2.) In particular, if such regulations as in the preceding paragraph mentioned provide that an employer or a workman who desires any matter to be referred to a medical referee under paragraph (*f*) of subsection 1 of section 8 of the Act shall apply to the registrar of a County Court for the matter to be so referred, it shall be the duty of the registrar to refer the same in accordance with such regulations.

Record and returns as to references.

(3.) The registrar shall keep a record in the form prescribed by regulations made by the Secretary of State of all cases in which medical referees are summoned as assessors or matters are referred to medical referees, and shall forward a copy of the same to the Secretary of State at such times as may be prescribed by such regulations. [*New.*]

Matters, how distinguished.

Matters, how distinguished.

83. Every matter brought into the court under the Act shall be intituled in the matter of the Act, and shall be distinguished by a separate number; and all documents filed and subsequent proceedings taken in the court with reference to such matter shall be intituled in like manner, and shall be distinguished by the same number; and the entries made in the special register with respect to each such matter shall be entered together, and shall be kept separate from the entries with respect to any other matter. [*Old Rule* 66.]

Forms.

Forms in Appendix or like forms may be used.

84. The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as the circumstances may require, may be used in proceedings under the Act. [*Old Rule* 67.]

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APPENDIX A.

FORMS.

Form 1.

Application for Arbitration by Injured Workman with respect to the Compensation payable to him.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.,
of [*address*]
[*description*] Applicant,

and

C.D. & Co., Limited,
of [*address*]
[*description*] Respondent.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. a workman employed by C.D. & Co., Limited [*or* by a sub-contractor with C.D. & Co., Limited, for the execution of work undertaken by them].

2. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(a) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; *or*

(b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(c) as to the amount [*or* duration] of the compensation payable by the said C.D. & Co., Limited, to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the said C.D. & Co., Limited for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name, place of business, and nature of business of respondent.

3. Nature of employment of applicant at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the employer by whom he was immediately employed, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

9. Payment, allowance or benefit received from employer during the period of incapacity.

10. Amount claimed as compensation.

11. Date of service of statutory notice of accident on respondent, and whether given before workman voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

12. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant.

Of his Solicitor.

The name and address of the respondent to be served with this application are:

Dated this day of

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 2.

Application for Arbitration by or on behalf of Dependants of Deceased Workman, with respect to the Compensation payable in respect of the Injury to such Dependants, where Death has resulted from an Injury to the Workman, and the Settlement of Questions as to who are Dependants, and the Apportionment and Application of such Compensation.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.
of [*address*]
[*description*] Applicant.

and

C.D. & Co., Limited,
of [*address*]
[*description*]

and

G.H.
of [*address*]
[*description*] Respondents.

[*or as the case may be; see Rule* 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [*or* by a contractor with C.D. & Co., Limited, for the execution of work undertaken by them] and on the day of the death of the said A.B. resulted from the injury.

2. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(a) as to whether the said A.B. was a workman to whom the above-mentioned Act applied; *or*

(b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*

(c) as to the amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*

(d) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act ; *or*

(e) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of the dependants of the said A.B. [*or* between E. F. , a dependant of the said A. B.] and the said C. D. & Co., Limited, and G. H. who claims or may be entitled to claim to be a dependant of the said A. B. ,

[*or as the case may be ; see Rule* 4]

for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

PARTICULARS—*continued.*

5. Nature of injury to deceased, and date of death.

6. Earnings of deceased during the 3 years next preceding the injury, if he had been so long in the employment of the employer by whom he was immediately employed, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of his actual employment under the said employer.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents with their names, addresses, and descriptions and occupations (if any).

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

PARTICULARS—*continued.*

13. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

14. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.H.

Dated this day of .

(Signed) Applicant.

[*Or* Applicant's Solicitor.]

FORM 3.

Application for Arbitration as to who are Dependants, or as to the Amount payable to each Dependant, where the total Amount payable as Compensation to the Dependants of a Deceased Workman has been agreed or ascertained.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.,
of [*address*]
[*description*] Applicant,

and

C.D. & Co., Limited.
of [*address*]
[*description*]

and

G.H.,
of [*address*]
[*description*]

J.K.,
of [*address*]
[*description*]

and

L.M.,
of [*address*]
[*description*] Respondents.

[*or as the case may be; see Rule* 5.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [*or* by , a contractor with C.D. & Co., Limited, for the execution of work undertaken by them] and on the day of the death of the said A.B. resulted from the injury.

2. The amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. , has been agreed [*or* ascertained], but a question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen; e.g.*]—

(a) as to who are dependants of the said A.B. , within the meaning of the above-mentioned Act; *or*

(b) as to the apportionment and application of the compensation payable to the dependants of the said A.B. .

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. acting on behalf of N.O. P.R. &c., dependants of the said A.B.' [*or* between E.F. N.O. P.R. &c., dependants of the said A.B.], and the said C.D. & Co., Limited, and G.H. J.K. and L.M. , who are or claim or may be entitled to claim to be dependants of the said A.B. .

[*or as the case may be; see Rule* 5]

for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name and place of business of employer by whom compensation has been paid or is payable.

3. Date of accident to deceased, and date of death.

4. Agreed or ascertained amount of compensation to be paid to dependants of deceased.

5. Particulars as to whether the compensation money is still payable by the employer or has been paid by him, and if so, to whom, and in whose hands it now is.

6. Character in which the applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

PARTICULARS —*continued.*

7. Particulars as to the dependants or persons claiming to be dependants by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were or claim to have been wholly or partially dependent on the earnings of the deceased at the time of his death.

8. The like particulars as to any dependants who are made respondents.

[NOTE.—*If there is a legal personal representative, and he is not the applicant, he must be made a respondent.*]

9. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, descriptions, and occupations (if any).

10. Particulars of the manner in which the applicant claims to have the amount of compensation apportioned and applied.

The names and addresses of the applicant and his solicitor are

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co., Limited.

G.H.

I.K.

L.M.

[*as the case may be.*]

Dated this day of .

Signed

Applicant.

or

Applicant's Solicitor.]

FORM 4.

Application for Arbitration with respect to Compensation payable in respect of Expenses of Medical Attendance and Burial, where deceased Workman leaves no Dependants.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.
No. of Matter

In the matter of an Arbitration between

E.F.,
of *address*
description

Applicant,

and

C.D. & Co., Limited,
of *address*
description

and

G.H.,
of *address*
description

Respondents.

1. On the day of personally by accident arising out of and in the course of his employment was employed by A.B. , late of , deceased, a workman employed by C.D. & Co., Limited, [*or* by , a contractor with C.D. , Limited,] for the execution of work undertaken by them and on the day of the death of the said A.B. resulted from the injury.

2. The said A.B. left no dependants within the meaning of the above-mentioned Act.

3. A question has [questions have] arisen

[*Insert briefly the question or questions arising*, viz.,—

(a) as to whether the said A.B. was a workman to whom the above-mentioned Act applied; *or*

(b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B. ; *or*

(c) as to the amount of compensation payable by the said C.D. & Co., Limited, under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B. ; *or*

(d) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited under the above-mentioned Act in respect of the reasonable expenses of the medical attendance on and the burial of the said A.B.

or as the case may be,]

I A. arbitrator under the above-mentioned Act is hereby requested by between E.F. and the C.D. & Co., Limited, and G.H. for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondent from whom compensation is claimed.

3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. [*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*]

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.

5. Nature of injury to deceased, and date of death.

6. Name and address of applicant for arbitration

7. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased, or as a person to whom expenses in respect of which compensation is payable are due; and if the latter, particulars must be given of the circumstances under which the expenses are claimed to be due to the applicant.

8. Particulars as to any other persons who claim that expenses in respect of which compensation is payable are due to them, and who are therefore made respondents, with their names and addresses.

9. Particulars of amount claimed as compensation, and of the manner in which the applicant desires such amount to be apportioned and applied.

10. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]

11. If notice not served, reason for omission to serve same.

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:

C.D. & Co. Limited.
G.H.

Dated this day of .

(Signed) Applicant.

[*Or*

Applicant's Solicitor.]

FORM 5.

Application for Arbitration with respect to the Review, Termination, Diminution, Increase, or Redemption of a Weekly Payment.

In the County Court of holden at
In the matter of the Workmen's Compensation Act, 1906.
No. of Matter

In the matter of an Arbitration between
C.D. & Co., Limited,
of [*address*]
[*description*] Applicants,
and
A.B.,
of [*address*]
[*description*]

[*or as the case may be; see* Act, Sched. 1, pars. 16, 17.]

An arbitration under the Workmen's Compensation Act, 1906, is hereby requested between C.D. & Co., Limited, and A. B.

[*or as the case may be; see* Act, Sched. 1, pars. 16, 17]

with respect to the review and termination [*or* diminution, increase, *or* redemption, *as the case may be*] of the weekly payment payable to the said A.B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.

Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of injured workman.	
2. Name and place of business of employer by whom compensation is payable.	
3. Date and nature of accident.	
4. Date of agreement, decision, award, or certificate fixing weekly payment, amount of such payment, and date from which it commenced.	
5. Relief sought by applicant, whether termination, diminution, increase, or redemption.	
6. Grounds on which termination, diminution, or increase is claimed.	

The names and addresses of the applicants and their solicitors are

Of the Applicants.

Of their Solicitor.

The name and address of the respondent to be served with this application are:

Dated this day of .

(Signed)

Applicants.

[*Or*

Applicants' Solicitor.]

FORM 6.

Application for Arbitration by an Injured Master, Seaman, Apprentice, or Pilot, with respect to the Compensation payable to him.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.,

of [*address*]
[*description*] Applicant.

and

The owners of the Ship " ."

Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , the master of

the ship " " [*or* a seaman [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the ship " "] [*or* a pilot employed on the ship " "]

2. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(a) As to whether the said A.B. is a workman within the meaning of the above-mentioned Act; *or*

(b) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(c) as to the amount [*or* duration] of the compensation payable by the owners of the said ship to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be*,]

3. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the owners of the said ship for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.

2. Name of ship of which applicant was master [*or* of the crew of which applicant was a member *or* on which applicant was employed as pilot] at time of accident, and port of registry.

3. Nature of employment at time of accident.

4. Date and place of accident, nature of work on which applicant was then engaged, and nature of accident and cause of injury.

5. Nature of injury.

6. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

7. Average weekly earnings during the 12 months previous to the injury, if the applicant has been so long employed under the same owners, or if not, during any less period during which he has been so employed.

8. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business after the accident.

PARTICULARS—*continued.*

9. Payment, allowance or benefit received from employer during the period of incapacity.	
10. Amount claimed as compensation.	
11. Date of service of statutory notice of accident, and whether given before applicant voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]	
12. If notice not served, reason for omission to serve same.	

The names and addresses of the applicant and his solicitor are:

Of the Applicant,

Of his Solicitor,

The name and address of the person to be served with this application as representing the owners of the ship are:

[*State name and address of manag[illegible] owner or manager, or of master of ship. See Rule* 36 (6).]

Dated this day of .

(Signed)

Applicant.

[*Or*

Applicant's Solicitor.]

FORM 7.

Application for Arbitration by or on behalf of Dependants of Deceased Master, Seaman, Apprentice, or Pilot.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.,
of [*address*]
[*description*] Applicant,

and

The owners of the ship " "

and

G.B.,
of [*address*]
[*description*] Respondents.

[*or as the case may be; see Rule* 4.]

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , late of ,

deceased, the master of the ship " " [*or* a seaman [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the ship " "] [*or* a pilot employed on the ship " "], and on the day of the death of the said A.B. resulted from the injury.

[*Or* 1. The ship " " which left the port of on or about the day of , was lost with all hands on or about the day of [*or* was last heard of on or about the day of , and is believed to have been lost with all hands.]

When the said ship left the said port A.B. , late of , was the master thereof [*or* a seaman [*or* an apprentice to the sea service *or* an apprentice in the sea-fishing service] and a member of the crew of the said ship] [*or* a pilot employed on the said ship.]]

2. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen; e.g.*]—

(a) as to whether the said A.B. was a workman within the meaning of the above-mentioned Act; *or*

(b) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*

(c) as to the amount of compensation payable by the owners of the said ship to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*

(d) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act; *or*

(e) as to the apportionment and application of the compensation payable by the owners of the said ship to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. .

[*or as the case may be.*]

3. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. [*or* between E.F. , a dependant of the said A.B.] and the owners of the said ship, and G.B. , who claims or may be entitled to claim to be a dependant of the said A.B.

[*or as the case may be; see Rule* 4]

for the settlement of the said question [*or* questions].

4. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of master, seaman, apprentice, or pilot.	
2. Name of ship of which deceased was master [*or* of the crew of which deceased was a member *or* on which deceased was employed as pilot] at time of accident or loss of ship, and port of registry.	

PARTICULARS—*continued.*

3. Nature of employment at time of accident or loss of ship.

4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury [*or* date and place when and where ship was lost or is deemed to have been lost].

5. Nature of injury to deceased and date of death [*or* date when ship was lost or is deemed to have been lost].

6. Earnings of deceased during the 3 years next preceding the injury or date of loss, if he had been so long employed under the same owners, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of actual employment under the said owners.

7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

8. Name and address of applicant for arbitration.

9. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

10. Particulars as to the dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

11. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

PARTICULARS—*continued.*

12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.	
13. Date of service of statutory notice of accident, and whether given before deceased voluntarily left the employment in which he was injured. [*A copy of the notice to be annexed.*]	
14. If notice not served, reason for omission to serve same.	

The names and addresses of the applicant and his solicitor are:—

Of the Applicant,

Of his Solicitor,

The names and addresses of the respondents to be served with this application are:—

As representing the owners of the ship

[*State name and address of managing owner or manager, or of master of ship. See Rule* 36 (6).]

and G. B.

Dated this day of .

(Signed) Applicant.

[*Or* Applicant's Solicitor.]

FORM 8.

Application for Arbitration where Security has been given on behalf of the Owners of a Ship under Section 11.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.,
of [*address*]
[*description*] Applicant,

and

[*names and addresses of persons giving security*] Respondents.

1. On the day of personal injury by accident arising out of and in the course of his employment was caused to A.B. , of .

and the said A.B. claims that the owners of the ship " " are liable under the Workmen's Compensation Act, 1906, to pay compensation in respect of the said injury.

2. The respondents have given security to abide the event of any proceedings that may be instituted in respect of the said injury, and to pay such compensation and costs as may be awarded thereon.

3. A question has [*or* questions have] arisen [*here state the questions, specifying only those which have arisen; e.g.*]—

(a) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; *or*

(b) as to the liability of the owners of the said ship to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(c) as to the amount [*or* duration] of the compensation payable to the said A.B. under the above-mentioned Act in respect of the said injury.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

[*Here insert particulars of circumstances under which the application is made, and of the relief or order which the applicant claims, adapting the particulars in the preceding forms to the circumstances of the case.*]

The names and addresses, &c. [*as in Form* 1].

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and the persons giving security.*

FORM 9.

Application for Arbitration by Workman disabled by or suspended on account of having contracted Industrial Disease coming within Section 8.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

A.B.,
of [*address*]
[*description*] Applicant,

and

C.D. & Co., Limited,
of [*address*]
[*description*] Respondent.

1. On the day of Mr. , the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district of [*or* Mr. , one of the medical referees appointed by the Secretary of State for

the purposes of the Workmen's Compensation Act, 1906,] certified that A.B. of was suffering from , a disease coming within section 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed.

[*Or* 1. On the day of , A.B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within section 8 of the Workmen's Compensation Act, 1906.]

2. The said A.B. alleges that the above-mentioned disease is due to the nature of his employment in [*describe employment*] and that he was last employed in such employment within the 12 months previous to the date of disablement or suspension by C.D. & Co., Limited, of .

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen; e.g.*]—

(a) as to whether the said A.B. is a workman to whom the Workmen's Compensation Act, 1906, applies; *or*

(b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, in respect of the said disease [*or* suspension]; *or*

(c) as to whether the said disease was in fact contracted whilst the said A.B. was in the employment of the said C.D. & Co., Limited, ; *or*

(d) as to whether the said disease is due to the nature of the employment of the said A.B. under the said C.D. & Co., Limited. ; *or*

(e) as to the amount [*or* duration] of the compensation payable by the said C.D. & Co., Limited, to the said A.B. under the Workmen's Compensation Act, 1906, in respect of the said disease.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the said C.D. & Co., Limited, for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and address of applicant.	
2. Name, place of business, and nature of business of respondents.	
3. Nature of employment of applicant under respondents to which the disease was due.	
4. Nature of disease.	
5. Date of disablement or suspension.	
6. Name and addresses of all other employers by whom applicant was employed in the same employment during the 12 months previous to date of disablement or suspension.	

PARTICULARS—*continued.*

7. Particulars of incapacity for work, whether total or partial, and estimated duration of incapacity.

8. Average weekly earnings during the 12 months previous to date of disablement or suspension, if the applicant has been so long employed under respondents, or if not, during any less period during which he has been so employed.

9. Average weekly amount which the applicant is earning or is able to earn in some suitable employment or business.

10. Payment, allowance, or benefit received from employer during period of incapacity.

11. Amount claimed as compensation.

12. Date of service of statutory notice of disablement or suspension on respondents. [*A copy of the notice to be annexed.*]

13. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form* 1].

FORM 10.

Application for Arbitration by or on behalf of Dependants of Deceased Workman whose Death has been caused by Industrial Disease.

In the County Court of holden at

In the matter of the Workmen's Compensation Act, 1906.

No. of Matter

In the matter of an Arbitration between

E.F.,
of [*address*]
[*description*] Applicant,

and

C.D. & Co., Limited,
of [*address*]
[*description*]

and

G.H.,
of [*address*]
[*description*] Respondents.

[*or as the case may be: see Rule* 4.]

1. On the day of Mr. the certifying surgeon under the Factory and Workshop Act, 1901, for the district of [*or* Mr. one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906], certified that A.B. of was suffering from , a disease coming within sect. 8 of the Workmen's Compensation Act, 1906, and was thereby disabled from earning full wages at the work at which he was employed; and on the day of the said A.B. died, his death being caused by the said disease.

[*Or* 1. On the day of A.B. of was in pursuance of special rules [*or* regulations] made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of his having contracted , a disease coming within sect. 8 of the Workmen's Compensation Act, 1906, and on the day of the said A.B. died, his death being caused by the said disease.]

[*Or* 1. On the day A.B. late of die his death being caused by , a disease coming within sect. 8 of the Workmen's Compensation Act, 1906.]

2. The applicant alleges that the above-mentioned disease was due to the nature of the employment of the said A.B. in [*describe employment*], and that he was last employed in such employment within the twelve months previous to his disablement or suspension [*or, if the workman died without having obtained a certificate of disablement, or was not at the time of his death in receipt of a weekly payment on account of disablement*, within the twelve months previous to his death] by C.D. & Co., Limited, of .

3. A question has [*or* questions have] arisen

[*here state the questions, specifying only those which have arisen, e.g.*]—

(a) as to whether the said A.B. was a workman to whom the Workmen's Compensation Act, 1906, applied; *or*

(b) as to the liability of the said C.D. & Co., Limited, to pay compensation under the Workmen's Compensation Act, 1906, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B. ; *or*

(c) as to whether the said disease was in fact contracted whilst the said A.B. was in the employment of the said C.D. & Co., Limited, ; *or*

(d) as to whether the said disease was due to the nature of the employment of the said A.B. under the said C.D. & Co., Limited, ; *or*

(e) as to whether the death of the said A.B. was in fact caused by the said disease ; *or*

(f) as to the amount of compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A.B. ; *or*

(g) as to who are dependants of the said A.B. within the meaning of the above-mentioned Act ; *or*

(h) as to the apportionment and application of the compensation payable by the said C.D. & Co., Limited, to the dependants of the said A.B. in respect of the injury caused to them by the death of the said A.B.

[*or as the case may be.*]

4. An arbitration under the above-mentioned Act is hereby requested between E.F. , the legal personal representative of the said A.B. , acting on behalf of the dependants of the said A.B. [*or* between E.F. , a dependant of the said A.B.] and the said C.D. & Co., Limited, and G.H. , who claims or may be entitled to claim to be a dependant of the said A.B.

[*or as the case may be; see Rule* 4]

for the settlement of the said question [*or* questions].

5. Particulars are hereto appended [*or* annexed].

PARTICULARS.

1. Name and late address of deceased workman.

2. Name, place of business, and nature of business of respondents from whom compensation is claimed.

3. Nature of employment of deceased under respondents to which the disease was due.

4. Nature of disease.

5. Date of disablement, and date of death.

6. Earnings of deceased during the 3 years next preceding disablement, if he had been so long in the employment of the respondents, or if the period of his employment had been less than the said 3 years, particulars of his average weekly earnings during the period of his actual employment under the respondents.

7. Names and addresses of all other employers by whom deceased was employed in the same employment during the 12 months previous to the date of disablement.

8. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.

9. Name and address of applicant for arbitration.

10. Character in which applicant applies for arbitration, *i.e.*, whether as legal personal representative of deceased or as a dependant, and if as a dependant, particulars showing how he is so.

PARTICULARS—*continued.*

11. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.

12. Particulars as to any persons claiming or who may be entitled to claim to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).

13. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.

14. Date of service of statutory notice of disablement. [*A copy of the notice to be annexed.*]

15. If notice not served, reason for omission to serve same.

The names and addresses, &c. [*as in Form* 2].

FORM 1[1]

Application for Arbitration where right of Employer against Insurers are transferred to Workman under Section 5.

In the County Court of holden at

In the matter of the Workmen's Compensation Act 1906.

No. of Matter

In the matter of an Arbitration

A.B.,
of [*address*]
[*description*] Applicant,

and

[*name and address of Insurers*] Respondents.

1. On the day of personal injury accident arising out of and in the course of his employment was caused A.B., a workman employed by of (*name and address of employer*) [or of , a contractor with (*name and address of employer*)] for the execution of

work undertaken by him], and the said A.B. claims that the said (*employer*) thereupon became liable to pay compensation under the Workmen's Compensation Act, 1906, to the said A.B. in respect of such injury.

[*Or, where weekly payment has been settled,*

1. Under an agreement [*or* a decision *or* an award *or* a certificate] recorded in this Court on the day of a weekly payment of is payable by of [*name and address of employer*] to the above-mentioned A.B. as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment as a workman employed by the said (*employer*) [*or* by of , a contractor with the said (*employer*) for the execution of work undertaken by him].]

2. The respondents are insurers of the said (*employer*) in respect of his [*or* their] liability to pay such compensation.

3. The said (*employer*) has become a bankrupt [*or* made a composition, *or* arrangement, with his creditors] [*or, if the employer is a company,* the said has commenced to be wound up]; and the rights of the said (*employer*) against the respondents as such insurers in respect of his [*or* their] liability to the said A.B. have by virtue of section 3 of the said Act been transferred to and vested in the said A.B.

4. A question has [*or* questions have] arisen

[*here state the questions specifying only those which have arisen, e.g.*]—

(a) as to whether the said A.B. is a workman to whom the above-mentioned Act applies; *or*

(b) as to the liability of the said (*employer*) to pay compensation under the above-mentioned Act in respect of the said injury; *or*

(c) as to the liability of the respondents as such insurers as aforesaid to the said A.B. ; *or*

(d) as to the amount [*or* duration] of the liability of the respondents as such insurers as aforesaid to the said A.B.

[*or as the case may be.*]

5. An arbitration under the above-mentioned Act is hereby requested between the said A.B. and the respondents for the settlement of the said question [*or* questions].

6. Particulars are hereto appended [*or* annexed].

PARTICULARS.

[*Here insert particulars containing a concise statement of the circumstances under which the application is made, and of all matters necessary to be stated in order to bring the questions to be settled properly before the judge or arbitrator, and of the relief or order which the applicant seeks, adapting the particulars given in the preceding forms to the circumstances of the case.*]

The names and addresses of the applicant and his solicitor are:—

Of the Applicant,

Of his Solicitor,

The name and address of the respondents to be served with this application are:—

Dated this day of .

(Signed) Applicant.

[*Or*

Applicant's Soliciter.]

NOTE.—*This form to be adapted as required to an application for arbitration as between the dependants of a deceased workman and insurers.*

FORM 12.

Notice to Applicant of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE, that the judge of this Court [*or* Mr. , the arbitrator appointed by the judge of this Court] will proceed with the arbitration in this matter at on the day of at the hour of o'clock in the noon.

Dated this day of .

To

Of

Registrar.

FORM 13.

Notice to Respondent of Day upon which Arbitration will be proceeded with.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE, that the judge of this Court [*or* Mr. the arbitrator appointed by the judge of this Court] will proceed with the arbitration applied for in the request and particulars a sealed copy of which is served herewith at on the day of at the hour of o'clock in the noon: and that if you do not attend either in person or by your solicitor at the time and place above mentioned such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject-matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject-matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of

Registrar.

FORM 14.

Answer by Respondents.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE —

That the respondent, G.H., disclaims any interest in the subject-matter of the above arbitration.

Or

That the respondents, C.D. & Co., Limited, state that the applicant's particulars filed in this matter are inaccurate or incomplete in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, desire to bring to the notice of the judge [*or* arbitrator] the facts stated in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, intend at the hearing of the arbitration to give evidence and rely on the facts stated in the particulars hereto annexed.

Or

That the respondents, C.D. & Co., Limited, deny their liability to pay compensation under the Act in respect of the injury to A.B. mentioned in the applicant's particulars, on the grounds stated in the particulars hereto annexed.

PARTICULARS.

1. *Particulars in which the Particulars filed by the Applicant are inaccurate or incomplete.*

2. *Facts which the Respondents desire to bring to the Notice of the Judge* [or *Arbitrator*].

That the applicant A.B. refuses to submit himself to medical examination as required by [*or* obstructs the medical examination required by] the respondents, C.D. & Co., Limited, in accordance with paragraph 4 of the first schedule to the Act [*or* refuses to submit himself for examination by a medical referee as ordered [*or* obstructs the examination by a medical referee ordered] in accordance with paragraph 15 of the first schedule to the Act.

[*or as the case may be.*]

3. *Facts which the Respondents C.D. & Co., Limited, intend to give in Evidence and rely on at the Hearing of the Arbitration.*

That notice of the alleged accident [*or* of death, disablement *or* suspension] was not given to the respondents as required by the Act; *or*

That the claim for compensation was not made on the respondents within the time limited by the Act; *or*

That a scheme of compensation [benefit *or* insurance] for the workmen of the respondents, C.D. & Co., Limited, has been duly certified by the Registrar of Friendly Societies, and such certificate was in force at the date of the alleged accident, and the said C.D. & Co., Limited, contracted with the applicant A.B. [*or* with the deceased workman], by a contract which was in force at the date of the alleged accident, that the provisions of the said scheme should be substituted for the provisions of the Act, and the said C.D. & Co., Limited, are consequently liable only in accordance with the said scheme.

[*or as the case may be.*]

4. *Grounds on which the Respondents deny their Liability to pay Compensation.*

(i.) That the applicant A.B. is [*or* the deceased workman was] not a workman to whom the Act applies; *or*

(ii.) That the injury to the applicants [*or* to the deceased workman] was not caused by accident arising out of and in the course of his employment; *or*

(iii.) That the injury to the applicant [*or* to the deceased workman] was attributable to the serious and wilful misconduct of the applicant [*or* of the deceased workman], and did not result in death or serious and permanent disablement; *or*

(iv.) That at the time of the alleged accident the applicant [*or* the deceased workman] was not immediately employed by the respondents, but was employed by of , a contractor with the respondents for the execution by or under such contractor of work undertaken by the respondents, and the accident occurred elsewhere than on, in, or about premises on which the respondents had undertaken to execute the work or which were otherwise under the control or management of the respondents; *or*

(v.) That the injury to the applicant [*or* to the deceased workman] was caused under circumstances creating a legal liability in a person other than the respondents, to wit, [*name and address of such person*] to pay damages in respect thereof, and the applicant [*or* the deceased workman] has taken proceedings against that person and has recovered damages from him; *or* *in case of industrial disease,*

(vi.) That the applicant [*or* the deceased workman] at the time of entering the employment of the respondents wilfully and falsely represented himself in writing as not having previously suffered from the disease mentioned in the applicant's particulars; *or*

(vii.) That the disease mentioned in the applicant's particulars was not contracted whilst the applicant [*or* the deceased workman] was in the employment of the respondents; *or*

(viii.) That the disease mentioned in the applicant's particulars was not due to the nature of the employment in which the applicant [*or* the deceased workman] was employed by the respondents :
[*or as the case may be.*]

And further take notice, that the names and addresses of the said respondents and their solicitors are :

Of the Respondents,
C.D. & Co., Limited,

Of their Solicitors,

Dated this day of .

(Signed)
Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant, A.B., and

To the Respondents
(*if any, naming them*).

FORM 15.

Notice by Respondent admitting Liability, and submitting to an Award for Payment of a Weekly Sum, or paying Money into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE –

That the respondents, C.D. & Co., Limited, admit their liability to pay compensation in the above-mentioned matter.

And they hereby submit to an award for payment by them to the applicant, A.B., of the weekly sum of such weekly payment to commence as from the day of and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

And for payment by them to the applicant forthwith after the award of the amount of such weekly payments calculated from the day of until the first Saturday [*or other usual pay day*] after the date of the award, and for the payment thereafter of the said sum of to the applicant on Saturday [*or other usual pay day*] in every week.

[*Or*, And the said C.D. & Co., Limited, herewith pay into Court the sum of £ in satisfaction of such liability.]

Dated this day of .

(Signed)
Solicitors for the Respondents,
C.D. & Co., Limited.

To the Registrar of the Court, and

To the Applicant, A.B., and

To the Respondents
(*if any, naming them*).

FORM 16.

Notice of filing of Submission to an Award.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice (copy of which is sent herewith) that they admit their liability to pay compensation in the above-mentioned matter, and submit to an award for payment by them to you of the weekly sum of .

If you elect to accept such weekly sum in satisfaction of your claim, you must send to the registrar of this Court, and to the said C.D. & Co. Limited, a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited.

If you send such notice, the judge of this Court will, on application made to him, make an award directing payment of such weekly sum to you, and you will be liable to no further costs.

In default of such notice, the arbitration will be proceeded with; and if no greater weekly payment is awarded to you, you will be liable to be ordered to pay the costs incurred by the respondents subsequent to the receipt by you of this notice.

Dated this day of .

Registrar.

To the Applicant, A.B.

FORM 17.

Notice of Payment into Court.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, have this day filed with me a notice that they admit their liability to pay compensation in the above-mentioned matter, and they have paid into Court the sum of £ in satisfaction of such liability.

If you are willing to accept the sum so paid into Court in satisfaction of the compensation payable in the above-mentioned matter, you must send to the registrar of this Court, and to the said C.D. & Co., Limited, and to the other respondents [*or, where this notice is sent to a respondent*, to the applicant and the other respondents], a written notice forthwith by post, or leave such notice at the office of the registrar, and at the residence or place of business of the said C.D. & Co., Limited, and at the residence or place of business of each of the other respondents [*or* of the applicant and each of the other respondents].

If you and all the other respondents [*or* If you and the applicant and all the other respondents] send such notice, and agree as to the apportionment and application of the said sum of £ , the judge of this Court will, on application made to him, make an award for such apportionment and application, and you will be liable to no further costs.

If you and all the other respondents [*or* If you and the applicant and all the other respondents] send such notice, but do not agree as to the appor-

tionment and application of the said sum of £ , the arbitration will be proceeded with as between you and such other respondents [*or* as between the applicant and yourself and such other respondents].

In default of such notice being sent by you and all the other respondents [*or* by the applicant and yourself and all the other respondents], the arbitration will be proceeded with: and if no greater amount than the said sum of £ is awarded as compensation, the parties who do not send such notice will be liable to be ordered to pay the costs incurred by the respondents, C.D. & Co., Limited, subsequent to the receipt by such parties of this notice, and also any costs incurred subsequent to the receipt of this notice by any parties who send notice of their willingness to accept the said sum of £ in satisfaction of the compensation payable in the above-mentioned matter.

Dated this day of .

Registrar.

To the Applicant, A.B.

[*or* To the Respondent, G.H.]

[*or as the case may be.*]

FORM 18.

Notice of Acceptance of Weekly Sum offered, or of Willingness to accept Sum paid into Court.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the applicant, A.B. accepts the weekly sum offered by the respondents, C.D. & Co., Limited, in satisfaction of his claim in the above-mentioned matter [*or*, that the applicant, E.F. [*or*, the respondent, G.H.], is willing to accept the sum of £ paid into Court by the respondents, C.D. & Co., Limited, in satisfaction of the compensation payable in the above-mentioned matter].

But the applicant [*or* the said respondent, G.H.] will apply to the judge to include in his award an order directing the said respondents, C.D. & Co., Limited, to pay the costs properly incurred by the applicant [*or* the said respondent, G.H.] before the receipt of notice of the offer of the said weekly sum [*or* of notice of payment of the said sum of £ into Court].

Dated this day of .

(Signed)

Applicant.

[*Or*

To the Registrar of the Court, and Respondent].

To the Respondents, C.D. & Co., Limited, and

To the Applicant, A.B., and

To the Respondents [*naming them*].

FORM 19.

Application for Addition of Employer as Respondent under Section 8, Sub-section (1), Paragraph (c), Proviso (ii).

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That the respondents, C.D. & Co., Limited, allege that the disease mentioned in the applicant's particulars filed in this matter was in fact contracted while the applicant [*or* the deceased workman] was in the employment of of , and not whilst in the employment of the said C.D. & Co., Limited.

And the said C.D. & Co., Limited, hereby apply for an order that the said be joined as respondents in the above arbitration, and if necessary for an adjournment of the hearing of the arbitration.

Dated this day of .

(Signed) C.D. & Co., Limited.

By

Secretary.

[*Or*

Solicitors for the Respondents,
C.D. & Co., Limited.]

To the Registrar of the Court.

FORM 20.

Order adding Respondents.

[*Heading as in Request for Arbitration.*]

It is this day ordered on the application of the respondents, C.D. & Co., Limited, that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon].

Dated this day of .

Registrar.

FORM 21.

Notice to Applicant and Original Respondents of Addition of Respondents.

[*Heading as in Request for Arbitration.*]

TAKE NOTICE—

That by order dated the day of it was ordered on the application of the respondents, C.D. & Co., Limited, (a copy whereof is hereto annexed), that of be added as respondents to this arbitration [and that the hearing of this arbitration be adjourned to the day of at o'clock in the noon].

Dated this day of .

Registrar.

To the Applicant
and
The Respondents,
C.D. & Co., Limited.

FORM 22.

Notice to Parties who are added as Respondents.

[*Heading as in Request for Arbitration.*]

To Messrs. , of [*address and description*].

TAKE NOTICE—

That by an order of this Court, dated the day of , a copy of which order is hereunto annexed, together with a copy of the request and particulars filed by the applicant in this matter, and a copy of the application on which the said order was made, you were ordered to be added as a respondent in the above arbitration.

And further take notice, that the hearing of the above arbitration has been appointed for the day of at o'clock in the noon, and that if you do not attend, either in person or by your solicitor, at the court-house at upon the day and at the hour above mentioned such order will be made and proceedings taken as the judge [*or* arbitrator] may think just and expedient.

And further take notice, that if you wish to disclaim any interest in the subject-matter of the arbitration, or consider that the applicant's particulars are in any respect inaccurate or incomplete, or desire to bring any fact or document to the notice of the judge [*or* arbitrator], or intend to rely on any fact, or to deny (wholly or partially) your liability to pay compensation under the Act, you must file with me an answer, stating your name and address and the name and address of your solicitor (if any), and stating that you disclaim any interest in the subject-matter of the arbitration, or stating in what respect the applicant's particulars are inaccurate or incomplete, or stating concisely any fact or document which you desire to bring to the notice of the judge [*or* arbitrator], or on which you intend to rely, or the grounds on and extent to which you deny liability to pay compensation.

Such answer, together with a copy thereof for the judge [*or* arbitrator], and a copy for the applicant and for each of the other respondents, must be filed with me ten clear days at least before the day of .

If no answer is filed, and subject to such answer, if any, the applicant's particulars and your liability to pay compensation will be taken to be admitted.

Dated this day of .

To

Of

Registrar.

FORM 23.

Notice by Respondent to Third Parties.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

To Mr. , of [*address and description*].

TAKE NOTICE that A.B. of, &c., has filed a request for arbitration (a copy whereof is hereto annexed) as to the amount of compensation payable by the respondents, C.D. & Co., Limited, to the said A.B. in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.

[*Or* that E.F. of has filed a request for arbitration (a copy whereof is hereto annexed) with respect to the compensation payable to the dependants of A.B. deceased, in respect of the injury caused to the said dependants by the death of the said A.B. which resulted from injury caused to the said A.B. by accident arising out of and in the course of his employment.]

[*Or as the case may be; see forms of request for arbitration.*]

The respondents, C.D. & Co., Limited, claim to be indemnified by you against their liability to pay such compensation, on the ground that at the time of the injury in respect of which compensation is claimed the said A.B. was not immediately employed by the said C.D. & Co., Limited, but was employed by you in the execution of work undertaken by the said C.D. & Co., Limited, in respect of which the said C.D. & Co., Limited, had contracted with you for the execution thereof by or under you.

[*Or* on the ground that the injury for which compensation is claimed was caused under circumstances creating a legal liability on your part [*add, if so,* as the persons who have given security in respect of the liability of the owners of the ship " "] to pay damages in respect thereof.]

[*or as the case may be.*]

[*Or, in case of industrial disease*, the respondents, C.D. & Co., Limited, claim to be entitled to contribution from you in respect of the compensation claimed from them, on the ground that the disease mentioned in the applicant's particulars was of such a nature as to be contracted by a gradual process, and that the said A.B. was employed by you during the 12 months previous to the date of disablement or suspension in the employment to the nature of which the disease was due.]

And take notice, that if you wish to dispute the applicant's claim as against the respondents, C.D. & Co., Limited, or your liability to the said respondents, you must appear before the judge [*or* arbitrator] at the time and place mentioned in the notice, a copy of which is hereunto annexed.

In default of your so appearing you will be deemed to admit the validity of any award made in the said arbitration as to any matter which the judge [*or* arbitrator] has jurisdiction to decide in such arbitration as between the applicant and the respondents, C.D. & Co., Limited, whether such award is made by consent or otherwise, and your own liability to indemnify the said C.D. & Co., Limited, [*or* to contribute as above mentioned].

Dated this day of .

(Signed) C.D. & Co., Limited,

To By

Of Secretary.

[*Or*

Solicitors for the Respondents,
C.D. & Co., Limited.]

FORM 24.

Award.

[NOTE.—*These forms are intended for use in ordinary cases only. The award in any special case must be settled under Rule* 28, *in accordance with the directions given by the judge or arbitrator.*]

(i.) *In case of Application by Workman.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me, I do hereby make my award as follows:—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C.D. & Co., Limited, do pay to the applicant, A.B., the weekly sum of as compensation for personal injury caused to the said A.B. on the day of , by accident arising out of and in the course of his employment as a workman employed by the said respondents, such weekly payment to commence as from the day of , and to continue during the total or partial incapacity of the said A.B. for work, or until the same shall be ended, diminished, increased, or redeemed in accordance with the provisions of the above-mentioned Act.

2. And I order that the said C.D. & Co. do forthwith pay to the said A.B. the sum of £ being the amount of such weekly payments calculated from the day of until the day of (1) and do thereafter pay the said sum of to the said A.B. on Saturday (2) in every week.

(1) First Saturday or other usual pay day after date of award.

4. And I order that the said C.D. & Co. do pay to the registrar of this Court, for the use of the applicant, his costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column of the scales of costs in use in the County Courts, and to be paid by the said C.D. & Co. to the registrar within 14 days from the date of the certificate of the result of such taxation.

(2) Or other usual pay day.

Dated this day of .

Judge [*or* Arbitrator].

(ii.) *In Case of Application by Dependants.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matter submitted to me, I do hereby make my award as follows:—

[*Here insert any introductory recitals of findings on which the award is made which the judge or arbitrator may direct.*]

1. I order that the respondents, C.D. & Co., Limited, do pay the sum of £ to the dependants of A.B., late of , deceased, as compensation for the injury resulting to such dependants from the death of the said A.B. , which took place on the day of from injury caused to the said A.B. on the day of by accident arising out of and in the course of his employment as a workman employed by the said respondents.

2. And I declare that the persons hereinafter named are entitled to share in such compensation as dependants of the said A.B. , that is to say, J.B., , the widow of the said A.B., and (1)

(1) Name the other persons.

3. [*Add, if so found.*] And I declare that the respondent G.H. , the of the said A.B. , is not entitled to share in such compensation as a dependant of the said A.B.

4. And I order that the said sum of £ be apportioned between the said J.B. and (1)

in the proportions following, that is to say:—

I apportion the sum of £ to or for the benefit of the said J.B., and the sum of £ to or for the benefit of the said (2)

(2) Specify the persons entitled and the sums apportioned to them.

5. And I order that the said C.D. & Co., Limited, do pay the said sum of £ to the registrar of this Court within 14 days from the date of this award.

6. And I order that on payment to the registrar of the said sum of £ , the registrar do forthwith pay to the said J.B. the sum of £ hereby apportioned to her [*or* the sum of £ out of the sum of £ hereby apportioned to her, and that the balance of the last-mentioned sum (less the fee for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said J.B., and that out of the sum so invested and the accruing interest thereof the registrar do from time to time until further order pay to the said J.B. the weekly [*or* fortnightly] sum of £ , the first payment to be made on the day of].

7. And I order that on payment to the registrar of the said sum of £ the sums of £ and £ hereby apportioned to or for the benefit of the said respectively (less the fees for the investment thereof) be invested by the registrar in his name in the Post Office Savings Bank for the benefit of the said and respectively, and that interest arising from such investments be from time to time until further order paid to the said J.B. to be by her applied for the maintenance, education, benefit of the said and respectively.

8. And I order that the said J.B. and the said

or any of them be at liberty to apply to the judge from time to time as they may be advised for any further or other order as to the application of any of the said sums so ordered to be invested and the accruing interest thereof.

9. And I order that the said C.D. & Co., Limited, do pay to the registrar of this Court, for the use of the applicants, their costs of and incident to this arbitration, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under

column of the scales of costs in use in the County Courts, and to paid by the said C.D. & Co., Limited, to the registrar within 14 da from the date of the certificate of the result of such taxation.

[*Add directions (if any given) as to costs occasioned by claim of person claiming as a dependant whose claim is disallowed.*]

Dated this day .

Judge [*or* Arbitrator].

(iii.) *In case of Application by Person to whom expenses of Medical Attendance or Burial are due.*

[*Heading as in Request for Arbitration.*]

Having duly considered the matters submitted to me y make my award as follows:—

[*Leave space for any introductory recitals of findings on war s made which the judge or arbitrator may direct.*]

1. I order that the respondents, C.D. & Co., Limited, e sur of £ for or towards the expenses of medical attendanc buri of A.B., late of , deceased, who died on the y of from injury caused on the day of by accident g ont and in the course of the employment of the said A.B. a w employed by the said C.D. & Co., Limited.

2. And I declare that the persons hereinafter named ntit in such compensation, that is to say:

The applicant, E.F., in respect of charges amou to [*or* payable by] him for medical attendance on the sa respondent, G.H. , in respect of charges amoun him for the burial of the said A.B.

3. And I order that the respondents, C.D. & C mited the said sum of £ to the registrar of this Cour am 14 date of this award, and that the said sum of £ appor and paid to the said E.F. and G.H. in proportion to amoun ti respectively as aforesaid.

4. And I order that the said C.D. & Co., Limited, registrar of this Court for the use of the applicant, E.F., an dent, G.H., their respective costs of and incident to this arbitra costs, in default of agreement between the parties as to the amount to be taxed by the registrar under column of the scales of the County Courts, and to be paid by the said C.D. & Co., Limite to the registrar within 14 days from the date of the certificate of th ult such taxations.

Dated this day of .

Judge [*or* Arbitrator].

[*Note.*—The above forms will serve as guides for framing awards in other cases of arbitration.]

FORM 25.

Notice of Day upon which Special Case will be heard.

In the County Court of holden at

[*Heading as in Special Case.*]

TAKE NOTICE that the judge of this Court will hear the special case stated in the above-named matter at a Court to be holden at on the day of at the hour of in the noon: and that if you do not attend in person or by your solicitor at the place and time above-mentioned, such order will be made and proceedings taken as the judge may think just.

You may obtain a copy of the case upon application at my office and upon prepayment of the costs of such copy.

Dated this day of .

Registrar.

To [*The Applicant and Respondents.*]

FORM 26.

Application for Order for Detention of Ship.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at

The Workmen's Compensation Act, 1906. Section 11.

The Ship. "

Application is hereby made on behalf of of , who alleges that the owners of the ship " " which has been found in the port [*or* river] of [*or* within three miles of the coast of England], are liable as such owners to pay compensation under the Workmen's Compensation Act, 1906, in respect of personal injury by accident arising out of and in the course of his employment caused to of on the day of in the port [*or* harbour] of and who claims compensation in respect of such injury, and alleges that none of the owners of the said ship reside in the United Kingdom, for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or* will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 27.

Undertaking as to Damages.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906. Section 11.

The Ship " ."

I, the undersigned , of , hereby undertake to abide by any order which may hereafter be made as to damages, in case any person affected by the order to be made on my application for the detention of the ship " " shall sustain any damages by reason of such order which I ought to pay.

Dated this day of .

(Signed)

[*Signature and Address of Applicant.*]

[*To be altered as required if the undertaking is given by any person other than the applicant.*]

FORM 28.

Order for Detention of Ship.

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

And that the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England]:

And whereas it has been shown to me, on the application of of , who claims compensation in respect of such injury, that the owners of the said ship are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom:

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay:]

Now I do hereby issue this order directed to you, the chief officer of Customs at [*or other officer named by the judge*] requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at .

[*or other officer named by the judge*].

FORM 29.

Bond by way of Security.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

And whereas the judge of this Court has issued an order directed to the chief officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law:

Now, therefore, we [*state names, addresses, and descriptions of sureties*] jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in England or Ireland in which any proceedings may be instituted in respect of the said injury, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation and costs as may be awarded thereon, execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said
and
the sureties, the day of
19 .

Before me,

Registrar.
[*or* Clerk to the Registrar nominated to take affidavits.]

FORM 30.

Order of Release.

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

You are hereby authorised and directed to release the ship " " now under detention by virtue of an order made on the day of , upon the payment of all costs, charges and expenses attending the custody thereof.

Dated this day of .

Judge.

To the Chief Officer of Customs at
[*or other officer named in the order for detention.*]

FORM 30A.

Solicitors Undertaking to give Security.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged that the owners of the ship " " are liable as such owners to pay compensation in respect of personal injury by accident arising out of and in the course of his employment caused to of in the port [*or* harbour] of :

Now, therefore, I, L.M. , of [*address*] , solicitor for the owners [agent, master, *or* consignee] of the said ship, hereby undertake within days from the date hereof to give security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation, and to pay such compensation and costs as may be awarded thereon.

Dated this day of .

(Signed) L.M.

FORM 31.

Application for Order for Detention of Ship by Employer claiming Indemnity.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Application is hereby made on behalf of of , who alleges:—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That the applicant, as the employer of the said has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906; and

3. That the applicant is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " " on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment: and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England]: and

5. That none of the owners of the said ship reside in the United Kingdom:

for an order directed to an officer of Customs or other officer named by the judge, requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the applicant or paid compensation in respect of the said injury, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

The grounds on which this application is made are set forth in the affidavit of filed herewith [*or* will be given in evidence on the hearing of the application].

Dated this day of .

(Signed)

[*Name and Address of Applicant or Applicant's Solicitor.*]

FORM 32.

Order for Detention of Ship on Application of Employer claiming Indemnity.

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged by of .

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That the said as the employer of the said has paid compensation [*or* has had a claim for compensation made on him] in respect of such injury under the Workmen's Compensation Act, 1906; and

3. That the said is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship], in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment; and

4. That the said ship has been found in the port [*or* river] of [*or* within three miles of the coast of England]:

And whereas it has been shown to me, on the application of the said that the applicant probably is [*or* will become] entitled to be indemnified under the said Act, and that none of the owners of the said ship reside in the United Kingdom:

[And whereas the said has filed an undertaking to abide by any order which may hereafter be made as to damages, in case any person affected by this order shall sustain any damages by reason of this order which the said ought to pay]:

Now I do hereby issue this order directed to you, the Chief Officer of Customs at [*or other officer named by the judge*], requiring you to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law.

Dated this day of .

Judge.

To the Chief Officer of Customs at
[*or other officer named by the judge*].

FORM 33.

Bail Bond by way of Security where Order of Detention made on Application of Employer claiming Indemnity.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

The Shipowners' Negligence (Remedies) Act, 1905.

The Workmen's Compensation Act, 1906.

The Ship " ."

Whereas it is alleged:—

1. That on the day of personal injury by accident arising out of and in the course of his employment was caused to of in the port [*or* harbour] of ; and

2. That of as the employer of the said , has paid compensation [*or* has had a claim for compensation made on him] in respect of the said injury under the Workmen's Compensation Act, 1906; and

3. That the said is [*or* will become] entitled to be indemnified under that Act by the owners of the ship " ," on the ground that the said injury was caused by the said ship [*or* sustained on in or about the said ship] in consequence of the wrongful act, neglect, or default of the owners of the said ship, or the master or officers or crew thereof, or of some other person in the employment of the owners of the said ship, or of some defect in the said ship or its apparel or equipment:

And whereas the judge of this Court has issued an order directed to the Chief Officer of Customs at [*or other officer named by the judge*], requiring him to detain the said ship until such time as the owners, agent, master, or consignee thereof have indemnified the said or paid compensation in respect of the said injury, or have given security in the sum of £ , to be approved by the judge, to abide the event of any proceedings that may be instituted in respect of the said injury, or to recover such indemnity, and to pay such compensation, indemnity, and costs as may be awarded thereon, or until the said ship shall be otherwise released by due course of law:

Now, therefore, we [*state names, addresses, and description of sureties*] jointly and severally submit ourselves to the jurisdiction of this Court, or of any other competent Court in England or Ireland in which any proceedings may be instituted in respect of the said injury, or to recover such indemnity, and consent that if the owners, agent, master, or consignee of the said ship shall not pay all such compensation, indemnity, and costs as may be awarded thereon execution may issue forthwith against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding pounds.

[*Signatures of Sureties.*]

This bail bond was signed by the said
and
the sureties, the day of , 19 .

Before me,

Registrar.

[*or* Clerk to the Registrar nominated to take affidavits.]

FORM 34.

Application for Appointment of new Arbitrator, Schedule II., Paragraph 8.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of an Arbitration between

A.B.
of (*address*)
(*description*) Applicant.

and

C.D. & Co., Limited,
of (*address*)
(*description*) Respondents.

Application is hereby made to the judge on behalf of the above-named to appoint a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or* refusal [*or* inability] to act] of the said Mr. .

And the applicant hereby requests that a time and place may be fixed for the hearing of the application.

Dated this day of .

(Signed)

Applicant.

[*or*

Applicant's Solicitor.]

FORM 35.

Summons on Application for Appointment of new Arbitrator.

[*Title as in application.*]

You are hereby summoned to attend before the judge in chambers at on the day of at the hour of in the noon, on the hearing of an application on the part of for the appointment by the judge of a new arbitrator in the above-mentioned matter in the place of Mr. , the arbitrator appointed therein, by reason of the death [*or* refusal [*or* inability] to act] of the said Mr. .

And take notice, that in default of your attendance at the time and place above mentioned, the judge will, on proof of the service of this summons, proceed to hear and dispose of the said application.

Dated this day of .

To

Registrar.

and to his [*or* their] Solicitor.

FORM 36.

Form of Memorandum under Paragraph 9 of Schedule II.

[*Not to be printed, but to be used as a Precedent.*]

To the Registrar of the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an Arbitration between
A.B. of, &c., Applicant.
and
C.D. & Co., Limited,
of, &c. Respondents.

[*or, where the matter has been decided by agreement without arbitration,*

In the matter of an Agreement between
A.B. of, &c.,
and
C.D. & Co., Limited,
of, &c., .]

Be it remembered, that on the day of personal injury was caused to the above-named A.B. by accident arising out of and in the course of his employment:

And that on the day of the following agreement was come to by and between the said A.B. and the said C.D. & Co., Limited, that is to say:

[*or* And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or* And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by the said A.B. and the said C.D. & Co., Limited ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

[*or, where death resulted from the accident,*

Be it remembered, that on the day of personal injury was caused to A.B. late of deceased, by accident arising out of and in the course of his employment, and that on the day of the said A.B. died as the result of such injury:

And that on the day of the following agreement was come to by and between C.B. G.B. &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, that is to say:

[*or* And that on the day of the following decision was given by a committee representative of the said C.D. & Co., Limited, and their workmen, having power to settle matters under the above-mentioned Act in the case of the said C.D. & Co., Limited, and their workmen; that is to say:]

[*or* And that on the day of the following award was made and given by me, the undersigned , being an arbitrator agreed on by C.B. G.B. , &c., the dependants of the said A.B. within the meaning of the above-mentioned Act, and the said C.D. & Co., Limited, ; that is to say:]

[*Here set out copy of agreement, decision, or award.*]

A copy of the report of Mr. , a medical referee appointed to report in the above-mentioned matter, is hereunto annexed [*add, if so,* The said Mr. attended the arbitration on the day of].

You are hereby requested to record this memorandum, pursuant to paragraph 9 of the second schedule to the above-mentioned Act.

Dated this day of .

[*To be signed—*

In the case of an agreement, by the parties or some or one of them, or by their or his solicitor on their or his behalf;

In the case of a decision by a committee, by the chairman and secretary on behalf of the committee;

In the case of an award, by the arbitrator.]

NOTE.—*This form to be adapted to the circumstances of the case and the matter decided.*

FORM 37.

Notice of Memorandum having been received.

In the County Court of holden at

[*Heading as in Memorandum.*]

TAKE NOTICE, that a memorandum, copy of which is hereto annexed, has been sent to me for registration.

Such memorandum appears to affect you.

I have therefore to request you to inform me within 7 days from this date whether you admit the genuineness of the memorandum, or whether you dispute it, and if so, in what particulars, or object to its being recorded, and if so, on what grounds.

If you do not inform me in due course that you dispute the genuineness of the memorandum or object to its being recorded, it may be recorded without further inquiry, and will be enforceable accordingly.

If you dispute its genuineness or object to its being recorded, it will not be recorded, except with your consent in writing, or by order of the judge of this court.

Dated this day of .

To Registrar.

FORM 38.

Notice disputing Memorandum, or objecting to its being recorded.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that the undersigned C.D. & Co., of , &c., dispute the genuineness of the memorandum sent to you for registration in the above-mentioned matter in the following particulars:—

[*here state particulars.*]

[*or* TAKE NOTICE, that the undersigned C.D. & Co., of , &c., object to the memorandum sent to you for registration in the above-mentioned matter being recorded, on the following grounds:—

[*here state grounds—see particularly Schedule 2, para. 9, proviso* (b).]]

Dated this day of .

C.D. & Co., Limited,

by Secretary.

[*or*

Solicitors for C.D. & Co., Limited.]

To

The Registrar.

FORM 39.

Notice that Memorandum is disputed, or of Objection to its being recorded.

[*Heading as in Memorandum.*]

TAKE NOTICE, that the genuineness of the memorandum in the above-mentioned matter left with [*or* sent to] me for registration is disputed by of , a party affected by such memorandum, in the following particulars:

[*here state particulars of dispute.*]

[*or* that of , a party interested in the memorandum in the above-mentioned matter left with [*or* sent to] me for registration objects to the same being recorded, on the following grounds:

[*here state grounds.*]]

The memorandum will therefore not be recorded, except with the consent in writing of the said , or by order of the judge of the court.

Dated this day of .

To Registrar.

FORM 40.

Notice of Application for Registration of Memorandum or for Rectification of Register.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day of , at the hour of o'clock in the noon [*in case of notice by solicitor*, on behalf of of], for an order for the registration of the memorandum sent to the registrar in the above-mentioned matter [*or* for an order for the rectification of the memorandum recorded in the above-mentioned matter] by [*state particulars of rectification applied for*], and for consequential directions, and for costs.

Dated this day of .

Applicant.
[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
and to Messrs.
(his [*or* their] solicitors).

FORM 41.

Notice to Parties where Registrar refers the Question of Recording a Memorandum of an Agreement to the Judge under Schedule II., Paragraph 9, Proviso (d).

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I have refused to record the memorandum sent to me in this matter for registration, and have referred the matter to the judge, pursuant to proviso (d) to paragraph 9 of the second schedule to the Act, it appearing to me that the said memorandum ought not to be registered by reason of—

(a) the inadequacy of the lump sum agreed to be paid in redemption of the weekly payment referred to in the memorandum; *or*

(b) the inadequacy of the amount of compensation agreed to be paid to , a person under legal disability; *or*

(c) the inadequacy of the amount of compensation agreed to be paid to and , dependants; *or*

(d) the agreement having been obtained by fraud [*or* undue influence *or* improper means].

AND FURTHER TAKE NOTICE, that by order of the judge you are hereby summoned to attend before the judge at a court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

And that if you do not attend either in person or by your solicitor on the day and at the hour above mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of .

Registrar.

To [*all parties concerned*].

FORM 42.

Application for Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (e).

In the County Court of holden at .

[*Heading as in Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge on the day of at the hour of in the noon, for an order for the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the day of , pursuant to proviso (e) to paragraph 9 of the second schedule to the

above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means],

and for consequential directions, and for costs.

Dated this day of .

Applicant.
[*Or* Applicant's Solicitor.]

To the Registrar of the Court
and to
Messrs.
and his [*or* their] Solicitor.

FORM 43.

Notice to Parties where Judge directs Inquiry as to Removal of Record of Memorandum of Agreement from Register under Schedule II., Paragraph 9, Proviso (c).

In the County Court of holden at .

[*Heading as in Memorandum.*]

WHEREAS it has been made to appear to the judge that an inquiry should be held as to the removal from the register of the record of the memorandum of the agreement in the above-mentioned matter which was recorded on the day of , pursuant to proviso (c) to paragraph 9 of the second schedule to the above-mentioned Act, on the ground that the said agreement was obtained by fraud [*or* undue influence *or* improper means]:

TAKE NOTICE, that you are hereby summoned to attend before the judge at a Court to be holden at on the day of at the hour of in the noon, when the matter will be inquired into by the judge;

AND that if you do not attend either in person or by your solicitor on the day and at the hour above-mentioned such order will be made and proceedings taken as the judge may think just and expedient.

Dated this day of .

Registrar.

To [*all parties concerned*].

FORM 41.

Form of Certificate under Section 1, Sub-section 4.

In the County Court of holden at .

No. of plaint.

Between
A.B.,
of [*address*]
[*description*] Plaintiff.

and

C.D. & Co., Limited,
of [*address*]
[*description*] Defendants.

And in the matter of the Workmen's Compensation Act, 1906.

I hereby certify that on the day of the above-named plaintiff commenced the above-named action against the above-named defendants claiming

[*here state claim of plaintiff in action.*]

And that on the trial of the said action on the day of it was determined that the injury in respect of which the plaintiff claimed damages in the said action was one for which the defendants were not liable in the said action, but that such defendants would have been liable to pay compensation in respect of such injury under the above-mentioned Act;

And that thereupon the said action was dismissed, but the Court, on the request of the plaintiff, proceeded to assess the compensation which the defendants would have been liable to pay under the said Act.

And that the Court assessed such compensation at the sum of £ and directed [*state directions given as to payment of compensation, and directions, if any given, as to costs, and as to the deduction from the compensation of any costs which in the judgment of the court were caused by the plaintiff bringing the action instead of proceeding under the Act*].

Dated this day of .

Registrar.

FORM 45.

Application for Summons of Medical Referee as Assessor.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Request for Arbitration.*]

The applicant [*or* respondent] applies to the judge to summon a medical referee to sit with him as an assessor, on the ground that questions are likely to arise in the arbitration as to the condition of the applicant or his fitness for employment [*or as the case may be*], and that it is desirable that the judge should have the assistance of a medical referee in the determination of such questions.

Dated this day of .

To the Registrar of the Court.

(Signed) A.B. ,
Applicant.
or
Solicitor for the Applicant.
[*or as the case may be.*]

I consent to a medical referee being summoned to sit with me as an assessor.

Judge.

FORM 46.

Notice of Refusal to summon Medical Referee as Assessor.

[*Heading as in Request for Arbitration.*]

I hereby give you notice that his honour the judge of this Court has directed me to inform you that your application for a medical referee to be summoned to sit with the judge as an assessor is refused, the judge being of opinion that the summoning of a medical referee is unnecessary.

Dated this day of .

Registrar.

To .
[*The applicant for an assessor.*]

FORM 47.

Summons to Medical Referee to sit as Assessor.

[*Title as in Request for Arbitration.*]

The day of .

Sir,

You are hereby summoned to attend and sit with the judge as an assessor at the court-house situate at on the day of at the hour of in the noon.

I am, sir,
Your obedient servant,

To
of .

Registrar.

FORM 18.

Application for Reference to Medical Referee under Schedule I., paragraph 15.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A.B. of , against C.D. & Co., Limited, of .

Or, where an arbitration is pending,

In the matter of an arbitration between A.B.

of [*address*]
[*description*] Applicant,

and

C.D. & Co., Limited,
of [*address*]
[*description*] Respondents.]

Or, where application is made after weekly payment has been settled,

In the matter of an agreement [*or* a decision *or* award *or* certificate] recorded in the above-mentioned Court as to the weekly payment payable to A.B. , of , by C.D. & Co., Limited, of .]

Application is hereby made to the Court on behalf of the above named A.B. and C.D. & Co., Limited, for a reference in the above-mentioned matter to a medical referee pursuant to paragraph 15 of the first schedule to the above-mentioned Act under the following circumstances:—

1. On the day of notice was given by [*or* on behalf of] the above-mentioned A.B. to the above-mentioned C.D. & Co., Limited, of personal injury caused to the said A.B. by accident arising out of and in the course of his employment, in respect of which injury the said A.B. claims compensation from the said C.D. & Co., Limited, under the said Act.

Or, where arbitration is pending,

1. An arbitration under the said Act is pending between the above-mentioned A.B. and the above-mentioned C.D. & Co., Limited, as to the amount of compensation payable to the said A.B. under the said Act in respect of personal injury caused to him by accident arising out of and in the course of his employment.]

[*Or, where weekly payment has been settled,*

1. Under an agreement [*or* a decision *or* award *or* certificate] in the above-mentioned matter, recorded in this Court on the day of , a weekly payment is payable to the above-mentioned A.B. by the above-mentioned C.D. & Co., Limited, as compensation in respect of personal injury caused to the said A.B. by accident arising out of and in the course of his employment.]

2. The weekly payment claimed by [*or* payable to] the said A.B. is .

3. A question has [*or* questions have] arisen between the said A.B. and the said C.D. & Co., Limited, as to the condition [*or* fitness for employment] of the said A.B. [*or* as to whether [*or* to what extent] the incapacity of the said A.B. is due to the accident], [*or* as to the condition [*or* fitness for employment] of the said A.B. and as to whether [*or* to what extent] the incapacity of the said A.B. is due to the accident], and no agreement can be arrived at between the said C.D. & Co., Limited, and the said A.B. with reference to such question [*or* questions].

4. The said A.B. has submitted himself for examination by a medical practitioner provided by the said C.D. & Co., Limited, [*or* has been examined by a medical practitioner selected by himself] [*or, if so,* the said A.B. has submitted himself for examination by a medical practitioner provided by the said C.D. & Co., Limited, and has also been examined by a medical practitioner selected by himself], and a copy of the report of the said practitioner is [*or* copies of the reports of the said practitioners are] annexed to this application.

The applicants request that an order may be made referring the matter to a medical referee for his certificate as to the condition of the said A.B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or* for his certificate whether [*or* to what extent] the incapacity of the said A.B. is due to the accident] [*or* for his certificate as to the condition of the said A.B. and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [*or* to what extent] the incapacity of the said A.B. is due to the accident].

Dated this day of .

Signed]

Applicant.

[*Or* Applicant's Solicitor.]

C.D. & Co., Limited,

by Secretary.

or

Solicitors for C.D. & Co., Limited.]

To the Registrar.

FORM 10.

Order of Reference, Schedule I., Paragraph 15.

In the County Court of holden at .

[*Heading as to Application.*]

On the application of A.B. of and C.D. & Co., Limited, of a copy of which is hereto annexed, I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said [*name of workman*], and to give his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit [*or* his certificate whether [*or* to what extent] the incapacity of the said is due to the accident] [*or* his certificate as to the condition of the said and his fitness for employment, specifying if necessary the kind of employment for which he is fit, and as to whether [*or* to what extent] the incapacity of the said is due to the accident].

Copies of the reports of the medical practitioners by whom the said has been examined are hereto annexed.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee. [*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court Office situate at on or before the day of .

Dated this day of .

Registrar.

FORM 50.

Order on Injured Workman to submit himself for Examination by Medical Referee.

In the County Court of holden at .

[*Heading as in Application.*]

To A.B. , of [*address and description*].

TAKE NOTICE, that I have appointed Mr. , of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine you in accordance with the application in the above-mentioned matter for a reference to a medical referee.

You are hereby required to submit yourself for examination by the referee [*add, where workman is in a fit condition to travel*] and to attend for that purpose at such time and place as may be fixed by him.

Dated this day of .

Registrar.

FORM 51.

Notice to Parties of Certificate of Medical Referee.

In the County Court of holden at .

[*Heading as in Application.*]

TAKE NOTICE, that I have received the certificate of the medical referee appointed in this matter, and that you may inspect the same during office hours at my office situate at , and may on request and at your own cost be furnished with or take a copy thereof.

Dated this day of .

To

and

Registrar.

FORM 52.

Notice of Application for suspension of Right to Compensation or to take or prosecute Proceedings in relation to Compensation, or of Right to Weekly Payments, under Schedule I. Paragraph 4, Paragraph 11, or Paragraph 15, and Rule 55.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906.

In the matter of a claim for compensation made by A.B. of against C.D. & Co., Limited, of .

[*or, where an arbitration is pending,*

In the matter of an arbitration between

A.B.,
of [*address*]
[*description*], Applicant,

and

C.D. & Co., Limited,
of [*address*]
[*description*], Respondents.]

[*or, where application is made after weekly payment has been settled,*

In the matter of an agreement [*or* a decision *or* an award *or* a certificate] recorded in the above-mentioned Court as to the weekly payment payable to A.B. of by C.D. & Co., Limited, of .

TAKE NOTICE, that I intend to apply to the judge at on the day of at the hour of in the noon [on behalf of Messrs. C.D. & Co., Limited, of, &c.,] for an order suspending your right to compensation in the above-mentioned matter and to take or prosecute any proceedings under the above-mentioned Act in relation to compensation [*or* suspending your right to weekly payments in the above-mentioned matter], on the ground that you refuse to submit yourself to medical examination as required by me [*or* by the said C.D. & Co., Limited, in accordance with paragraph 4 [*or* paragraph 11] of the first schedule to the Act, *or* that you obstruct the medical examination required by me [*or* by the said C.D. & Co., Limited,] in accordance with paragraph 4 [*or* paragraph 11] of the first schedule to the Act], [*or* on the ground that you refuse to submit yourself for examination by a medical referee as ordered under paragraph 15 of the first schedule to the Act, *or* that you obstruct the examination by a medical referee ordered under paragraph 15 of the first schedule to the Act], and for consequential directions, and for costs.

Dated this day of .

To A.B., of

and to Messrs.
his Solicitors

(Signed) C.D. & Co., Limited,
by Secretary.

[*or*

Solicitors for C.D. & Co., Limited.]

FORM 53.

Precipe for Payment into Court under Schedule I., Paragraph 5.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an Arbitration between

A.B.,
of, &c., Applicant,

and

C.D. & Co., Limited,
of, &c., Respondents.

or

[In the matter of an Agreement between

A.B.,
of, &c.,

and

C.D. & Co., Limited,
of, &c.]

or

[In the matter of a certificate given in an action in (*state Court*).

Between

A.B.,
of, &c., Plaintiff,

and

C.D. & Co., Limited,
of, &c. Defendants.]

[*or as the case may be.*]

TAKE NOTICE, that C.D. & Co., Limited, of [*or* Messrs. solicitors for C.D. & Co., Limited, of] do pay into Court [*when paid by solicitors, add* at the request and by the authority of the said C.D. & Co., Limited,], the sum of [*state sum in letters*] , being the sum awarded [*or* agreed *or* directed] to be paid by the said C.D. & Co., Limited, as compensation in the above-mentioned matter.

Dated this day of .

[Signed] C.D. & Co., Limited, ,
by ,
Secretary.

[*Or*

Solicitors for C.D. & Co., Limited.]

To the Registrar.

Received the above-mentioned sum of .

Registrar.

[*Date.*]

FORM 54.

Application for Order for Payment into Court of Weekly Payment payable to Person under Disability. Schedule 1., Paragraph 7.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at on the day of , at the hour of in the noon, for an order that the weekly payment payable in the above-mentioned matter to a person under legal disability [*or* to me] be during his [*or* my] disability paid into Court, and for consequential directions.

Dated this day of .

(Signed)

To the Registrar
and [*to the parties interested*].

FORM 55.

Application for Variation of Order under Schedule 1., Paragraph 9.

[*Not to be printed, but to be used as a Precedent.*]

[*Heading as in Award, Memorandum or Certificate.*]

TAKE NOTICE, that I [*name and address of applicant*] intend to apply to the judge at a Court to be holden on the day of , at the hour of in the noon, for an order that the order of the Court [*or* the award] made in the above-mentioned matter on the day as to the apportionment of the sum paid as compensation among the dependants of A.B. deceased [*or* as to the manner in which the sum payable to a dependant of A.B. deceased, should be invested, applied or otherwise dealt with] may be varied by directing [*here state variation claimed by applicant*] and for consequential directions.

And further take notice that the circumstances in which this application is made are

[*State particulars.*]

Dated this day .

(Signed

Applicant.

[*Or*

Applicant's Solicitor.]

To the Registrar,
and to [*all persons interested*].

FORM 56.

Application by Workman intending to cease to reside in the United Kingdom for Reference to Medical Referee under Schedule I., Paragraph 18.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

In the matter of the Workmen's Compensation Act, 1906,

and

In the matter of an agreement [*or* a decision *or* award *or* certificate] recorded in the above-mentioned Court as to the weekly payment payable to A.B. of by C.D. & Co., Limited, of .

TAKE NOTICE, that A.B. of , to whom under an agreement [*or* a decision *or* an award *or* a certificate] in the above-named matter recorded in this Court on the day of a weekly payment of is payable by the above-mentioned C.D. & Co., Limited, as compensation for personal injury caused to the said A.B. by accident arising out of and in the course of his employment, intends to cease to reside in the United Kingdom;

And that the said A.B. intends to apply to the registrar at , on the day of , at the hour of in the noon, for an order referring to a medical referee the question whether the incapacity of the said A.B. resulting from the injury is likely to be of a permanent nature.

Dated this day of .

(Signed)

Applicant.

[*or*

Applicant's Solicitor.]

To the Registrar of the Court
and to [*the employer*].

FORM 57.

Order of Reference, Schedule I., Paragraph 18.

In the County Court of holden at .

On the application of of (a copy of which is hereto annexed),

I hereby appoint Mr. of , one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said [*name of workman*] and to give his certificate as to whether the incapacity of the said [*name of workman*] resulting from the injury is likely to be of a permanent nature.

The said , who is now at , has been directed to submit himself for examination by the referee.

I am satisfied that the said is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as may be fixed by the referee.

[*or* The said does not appear to be in a fit condition to travel for the purpose of being examined.]

The referee is requested to forward his certificate to the Registrar at the County Court office situate at on or before the day of , specifying therein the nature of the incapacity of the said , and whether the same is total or partial.

Dated this day of .

Judge [*or* Registrar].

FORM 58.

[*To be printed on thick blue foolscap.*]

Certificate of Identity.

[TO BE CAREFULLY PRESERVED.]

NOTICE. THIS CERTIFICATE IS NO SECURITY WHATEVER FOR A DEBT.

No. of Certificate .

In the County Court of , holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

This is to certify that A.B., late of [*address and description*], is entitled to a weekly payment of from [*name and address of employer*], as compensation payable to the said A.B., in respect of personal injury caused to him by accident arising out of and in the course of his employment, such weekly payment to continue during the total or partial incapacity of the said A.B., for work:

And that the description of the said A.B., and his incapacity for work, as certified by the medical referee appointed in this matter, are as follows: —

Age,

Height,

Hair, Eyes,

Nature of incapacity,

[*Describe nature of incapacity, and whether the same is total or partial, as in certificate of medical referee.*]

Dated this day of .

Registrar.

FORM 39.

Notice to be given to Workman intending to cease to reside in the United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that if you desire to obtain payment of the weekly payments payable to you under the award [memorandum *or* certificate] hereto annexed while you are residing out of the United Kingdom, you must, at intervals of three months from the date up to which such payments have been made, submit yourself to examination by a medical practitioner in the place where you are residing, and produce to him the copy of the certificate of the medical referee and the certificate of identity hereto annexed: and you must obtain from such medical practitioner a certificate in the form hereto annexed that he has examined you, and that your incapacity resulting from the injury specified in the certificate of the medical referee continues: and such certificate must be verified by the medical practitioner by declaration in your presence before some such person as hereinafter mentioned.

You must also attend before some such person as hereinafter mentioned, and make a declaration in the form hereto annexed that you are the same person as mentioned in the copy of the certificate of the medical referee and in the certificate of identity hereto annexed, and in the certificate of the medical practitioner by whom you have been examined, producing to such person the copy and certificates above mentioned.

You must then transmit to me, at my office, situate at , the certificate of the medical practitioner by whom you have been examined, and your declaration, together with a request for transmission to you of the amount of the weekly payment due to you, specifying the place where and the manner in which the amount is to be transmitted, according to the form hereto annexed, which request must be signed in your own handwriting.

The persons before whom a certificate may be verified or a declaration made are:—

1. Any person having authority to administer an oath in the place in which you reside.

2. Any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign place in which you reside, or any British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent exercising his functions in any foreign place in which you reside.

Dated this day of .

Registrar.

To A.B.,
of [*address and description*].

FORM 60.

Form of Medical Certificate to be obtained by Workman residing out of the United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

I, [*name, address, and medical qualifications of medical practitioner*] hereby certify that I have this day examined A.B. of , whom I conscientiously believe to be the same person as A.B. of , described in the copy certificate of the medical referee in the above-mentioned matter, dated the day of , and in the certificate of identity dated the day of produced to me by the said A.B. ; and that in my opinion the incapacity of the said A.B. resulting from the injury described in the said certificate of the medical referee still continues.

Dated this day of .

[*Signature*].

Declared at this day of , in the presence of the said A.B. , the copy of the certificate of the medical referee and the certificate of identity above-mentioned being at the same time produced,

Before me –

[*Signature and description of person before whom the declaration is made.*]

FORM 61.

Declaration of Identity by Workman residing out of the United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

I, A.B. of hereby declare that I am the same person as A.B. of described in the copy of the certificate of the medical referee in the above-mentioned matter, dated the day of , now produced by me, and in the certificate of identity, dated the day of , now produced by me, and the same person as A.B. of described in the certificate of declared by the said in my presence on the day of , and now produced by me.

(Signed)

A.B.

Declared at this day of , the certificates above mentioned being at the same time produced,

Before me—

[*Signature and description of person before whom the declaration is made.*]

FORM 62.

Request for Transmission of Amount of Weekly Payments by Workman residing out of United Kingdom.

[*Heading as in Award, Memorandum, or Certificate.*]

Sir,

I herewith enclose medical certificate and affidavit of identity, and request that the amount of the weekly payments due to me in the above-mentioned matter may be transmitted to me at

[*give full address*]

[*state how transmission to be made, as*]—

by Post Office Order payable at

[*name of Post Office*]

or by bankers' draft on the

[*name and address of Bank*].

I am, Sir,

Your obedient Servant,

A.B.

[*To be signed by the workman in his own handwriting.*]

To the Registrar
of the County Court of
holden at
[*add address of Registrar's Office.*]

FORM 63.

Notice by Registrar to Employer of Receipt of Medical Certificate and Declaration of Identity.

[*Heading as in Award, Memorandum, or Certificate.*]

TAKE NOTICE, that I have received proof of identity and of continuance of incapacity in the above-mentioned matter.

And I have to request you to transmit the sum of , being the amount of the weekly payments payable to A.B. under the above-mentioned award [memorandum *or* certificate] from [*the date to which they were last paid*] to [13 *weeks from that date*] to me, to be by me remitted to the said A.B. .

Dated this day of .

Registrar.

To [*name and address of employer*].

FORM 64.

Notice of Application for Determination of Amount of Costs under Schedule II., Paragraph 14.

[*Not to be printed, but to be used as a Precedent.*]

In the County Court of holden at .

[*Heading as in Award or Memorandum.*]

TAKE NOTICE, that I intend to apply to the judge at on the day at the hour of o'clock in the noon, to determine the amount of costs to be paid to me as solicitor [*or* agent] for you A.B. in the above-mentioned matter;
and for an order declaring that I am entitled to a lien for such amount on or to deduct such amount from the sum awarded as compensation to you the said A.B. in the above-mentioned matter, and for consequential directions.

Dated this day of .

Applicant.

To the Registrar of the Court,
and to
A.B.
of

FORM 65.

Execution on Award or Memorandum or Certificate.

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge] whereby it was ordered [*state operative parts of award*]:

[*or* Whereas on the day of a memorandum was recorded in this Court of an agreement [*or* a decision *or* an award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*]:

[*or* Whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of certificate*]:

And whereas default has been made in payment of the sum of £ payable by the said into Court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate]:

These are therefore to require and order you forthwith to make and levy by distress and sale of the goods and chattels of [*name the party against whom goods executions is issued*] wheresoever they may be found within the district of this Court (except the wearing apparel and bedding of him or his family, and the tools and implements of his trade, if any, to the value of five pounds), the sum stated at the foot of this warrant, being the amount due under the said award [*or* memorandum *or* certificate], together with the costs of this execution; and also to seize and take any money or bank notes (whether of the Bank of England or of any other bank) and any cheques, bills of exchange, promissory notes, bonds, specialties, or securities for money of the said which may there be found, or such part or so much thereof as may be sufficient to satisfy this execution, and the costs of making and executing the same, and to pay what you shall have so levied to the registrar of this Court, and to make return of what you have done under this warrant immediately upon the execution thereof.

Given under the seal of the Court this day of 19 .

By the Court,

Registrar.

To the High Bailiff of the said Court,
and others the Bailiffs thereof.

	£	s.	d.
Amount in payment where of default has been made.....			
Poundage for issuing this warrant			
Total amount to be levied with fees for execution of warrant, as indorsed hereon.			

NOTICE.—The goods and chattels are not to be sold until after the end of five days next following the day on which they were seized, unless they be of a perishable nature, or at the request of the said .

Application was made to the registrar for this warrant at minutes past the hour of in the noon of the day of 19 .

SEE BACK.

[*To be indorsed on every warrant of execution.*]

FEES FOR THE EXECUTION OF THIS WARRANT.

51 & 52 Vict. c. 43, s. 155. Order XXV., Rule 17.

The fees for keeping possession of the goods seized (including expenses of removal, storage of goods, and all other expenses) IS SIXPENCE IN THE POUND PER DAY NOT EXCEEDING SEVEN DAYS ON THE VALUE OF SUCH GOODS, to be fixed by appraisement in case of dispute, so that the total fee does not exceed 10*s.* per day, although the value may exceed 20*l.*, and, in addition, for feeding animals, the actual cost thereof.

If the debtor pays the amount to be levied, as stated on the other side, within half an hour of the entry of the bailiff, he will not be required to pay to him any further sum.

If possession is kept after the seventh day at the written request of both parties, the fees and cost of keeping possession as above may be allowed for a reasonable further time in respect of such possession.

If the goods are removed, the debtor will have to pay the appraisement fee as undermentioned.

If the goods are sold, the following fees are chargeable for the appraisement and sale, and no others:

For the appraisement, SIXPENCE IN THE POUND on the value of the goods appraised, over and above the stamp duty.

For the sale, including advertisements, catalogues, sale and commission, and delivery of the goods, ONE SHILLING IN THE POUND ON THE NET PRODUCE OF THE SALE.

For advertising and giving publicity to any sale by auction, pursuant to section 145 of the Bankruptcy Act 1883, in addition to the last-mentioned fee, the sum actually and necessarily paid.

Where no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, there may be allowed all charges actually and necessarily incurred for inventory, appraisement, cataloguing, lotting, and preparing for sale, not exceeding ONE SHILLING IN THE POUND on the value of the goods seized, if such value does not exceed ten pounds, and EIGHTPENCE IN THE POUND on any excess above ten pounds, the value to be fixed by appraisement in case of dispute, and in addition any sum actually and necessarily paid for advertising pursuant to section 145 of the Bankruptcy Act 1883.

If the goods are removed, the bailiff is required to give the debtor a sufficient inventory of the goods so removed, and to give him notice of the time when and the place where such goods will be sold, at least twenty-four hours before the time fixed for the sale.

If the goods are sold, the bailiff is required to furnish the debtor, on request, with a detailed account in writing of the sale, and of the application of the proceeds thereof.

[*This form to be adapted to the circumstances of the case where execution is ordered to issue under Rule* 66, *paragraph* (*c*), *for costs.*

FORM 66.

Judgment Summons on Award, Memorandum, or Certificate.

In the County Court of holden at .

[*Heading as in Award, Memorandum, or Certificate.*]

Whereas on the day of an award was made in the above-mentioned matter by the judge [*or* by Mr. , an arbitrator appointed by the judge], whereby it was ordered [*state operative parts of award*]:

[*or* Whereas on the day of a memorandum was recorded in this Court of an agreement [*or* a decision *or* an award] come to [*or* given *or* made] in the above-mentioned matter, whereby it was agreed [*or* ordered] [*state operative parts of agreement, decision, or award*]:

or Whereas on the day of a memorandum was recorded in this Court of a certificate given by the County Court of holden at to the effect that [*state operative parts of award, &c.*]:

And whereas default has been made in payment of the sum of £ payable by you the above-named into Court [*or* to the said A.B.] according to the said award [*or* memorandum *or* certificate]:

You the said are therefore hereby summoned to appear personally in this Court at [*place where Court holden*] on the day of , 19 , at the hour of in the noon, to be examined on oath by the Court touching the means you have or have had since the date of the award *or* memorandum *or* certificate] to pay the said sum, in payment of which you have made default; and also to show cause why you should not be committed to prison for such default, or why a receiving order should not be made against you pursuant to sub-section 5 of section 103 of the Bankruptcy Act, 1883.

Dated this day of 19 .

Registrar.

To [*name and address of the party against whom the summons is issued*].

	£	s.	d.
Amount in payment of which default has been made			
Costs of this summons			
Total sum due.....			

NOTE.—*This form to be adapted to the circumstances of the case where a summons is issued under the County Court Rules, Order XXV., Rule 27, against a person alleged to be a partner in or sole member of a firm, or to be carrying on business in any name other than his own; see Form* 184 *in the Appendix to the County Court Rules. If an order of committal is made it should be according to Form* 189 *or Form* 191 *in the said Appendix, such forms being adapted to the case of default in payment of an amount due under an award, memorandum, or certificate.*

FORM 67.

Register.

The Workmen's Compensation Act, 1906.

Register.

No. of Matter.	Title.	Date of Proceedings.	Nature.
1	In the matter of arbitration between A.B., of, &c., Applicant, and C.D. & Co., Limited, of, &c., Respondents.	July 11, 1907	Request for arbitration filed, and copy sent to judge.
		July 20, 1907	Appointment of Mr. as arbitrator.
		July 24, 1907	Copy request sent to arbitrator.
		July 29, 1907	Day for arbitration fixed.
		July 29, 1907	Notice of day fixed sent to applicant, and notice with copy request sent to respondents by registered post.
		Aug. 5, 1907	Respondents' answer filed; copies sent to arbitrator and applicant.
		Aug. 8, 1907	Application by applicant for discovery; order made.
		Aug. 15, 1907	Respondents' affidavit filed.
		Aug. 19, 1907	Five subpœnas issued on application of applicant's solicitor.
		Aug. 23, 1907	Arbitration held; Mr. appointed as medical referee to report; further hearing adjourned.
		Sept. 5, 1907	Report of medical referee received and forwarded to arbitrator; notice given to the parties.
		Oct. 16, 1907	Further hearing. Award made as follows [*enter minute of award*].
		Oct. 23, 1907	Costs of applicant taxed at £ .
		Nov. 5, 1907	£ for costs paid into Court by respondents.
		Nov. 11, 1907	£ for costs paid to applicant's solicitor.
2	In the matter of an agreement between A.B., of , and E.F. & Co., Limited, of, &c.	Oct. 7, 1907	Memorandum of agreement as to compensation, signed by solicitor of A.B., left to be recorded.
		Oct. 8, 1907	Notice and copy memorandum sent by post to E.F. & Co., Limited.

No. of Matter.	Title.	Date of Proceedings.	Nature.
		Oct. 10, 1907	Notice received from E.F. & Co., Limited, disputing memorandum.
		Oct. 10, 1907	Notice sent to A.B.'s solicitor, that memorandum is disputed, and will not be recorded without consent in writing of E.F. & Co., Limited, or order of judge.
		Oct. 15, 1907	Application on behalf of A.B. that memorandum be recorded.
		Oct. 22, 1907	Application heard, and order made that memorandum be recorded with alterations.
		Oct. 24, 1907	Memorandum recorded as follows [set out memorandum].
		Oct. 31, 1907	Costs of A.B. taxed and allowed at £ .
		Nov. 18, 1907	Execution issued for costs.
			&c., &c., &c.

NOTE.—*Similar entries to be made as to all matters required to be recorded.*

We, William L. Selfe, William Cecil Smyly, Robert Woodfall, Thomas C. Granger, and H. Tindal Atkinson, being the five judges of the County Courts appointed for the making of Rules under section one hundred and sixty-four of the County Courts Act, 1888, having made the foregoing Rules of Court, pursuant to paragraph twelve of the Second Schedule to the Workmen's Compensation Act, 1906, do hereby certify the same under our hands, and submit them to the Lord Chancellor accordingly.

Wm. L. Selfe.
William Cecil Smyly.
R. Woodfall.
T. C. Granger.
H. Tindal Atkinson.

I allow these Rules,
Loreburn, C.

The 1st of June, 1907.

APPENDIX B.

THE following forms and bills of costs are based on an actual case taken to the House of Lords. The bills of costs are valuable, as they indicate the actual work to be done as well as the charges usually allowed, and to them the practitioner is referred for the details of the procedure.

As the facts in the actual case involved a point of law now happily obsolete, it seemed a waste of valuable time and space to give them when there was so much to be said and written about matters arising out of the present Act. I have therefore selected another set of facts to illustrate that most difficult of questions—casual labour. So, also, instead of leaving the judgment in blank, I have taken advantage of it to supplement my remarks in the text by arguments applicable to a concrete case. Probably what is here written will only anticipate by a very few weeks actual decisions in actual cases.

March 30th, 19 .

NOTICE TO RESPONDENTS AS FOLLOWS:

61 Lady Street,
Ludtown,
March 30th, 19 .

D TERED.

R SIR,

Please take notice that on the 15th day of March, 19 , A. B., of ower Brick Street, Ludtown, who was a workman in your employment, fell from a ladder into the kitchen area of your house, "Dulce Domum," and sustained serious personal injuries.

Yours truly,
Y. Z.,
Solicitor for the applicant.

To C. D., Esq.,
"Dulce Domum,"
River Bank,
Ludtown.

The applicant having died, a further notice as follows was sent:—

REGISTERED.

61, Lady Street,
Ludtown,
10th April, 19 .

April 10th, 19 .

DEAR SIR,

In the Matter of the Workmen's Compensation Act, 1906.

Please take notice that on the 15th day of March, 19 , A. B., of 281, Lower Brick Street, Ludtown, who was a workman in your employment, sustained injuries by falling from a ladder when cleaning the windows at your house, "Dulce Domum," and that from the effects of such injuries he has since died at the City Hospital on the 8th day of April, 19 . And please take further notice that I am instructed by E. F., the widow of the said A. B., deceased, to state that she and their four children were dependent upon the said A. B., and that they hereby claim compensation under the above Act.

Yours truly,
Y. Z.,
Solicitor for the said E. F

C. D., Esq.,
"Dulce Domum,"
River Bank,
Ludtown.

Application for arbitration by E. F., widow of A. B., as legal personal representative of deceased.

In the County Court of , holden at .

April 24th, 19 .

In the Matter of the Workmen's Compensation Act, 1906.

No. of Matter, 97.

Form 2 *(a)*.

In the Matter of an arbitration between E. F., of 281, Lower Brick Street, Ludtown, widow, administratrix of A. B. - - - - - *Applicant*,

and

C. D., of "Dulce Domum," River Bank, Ludtown, army coach - - - - - *Respondent*.

1. On the 15th day of March, 19 , personal injury by accident arising out of and in the course of his employment was caused to A. B., late of 281, Lower Brick Street, Ludtown, deceased, a workman employed by C. D., and on the 8th day of April, 19 , the death of the said A. B. resulted from the injury.

2. Questions have arisen—

(a) As to whether the said A. B. was a workman to whom the above-mentioned Act applied.

(b) As to the liability of the said C. D. to pay compensation under the above-mentioned Act to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

(c) As to the amount of compensation payable by the said C. D. to the dependants of the said A. B. under the above-mentioned Act in respect of the injury caused to them by the death of the said A. B.

(a) Form 2 in Appendix also provides for the case of disputes as to who are dependants. Rule 4 (2) requires those who claim to be dependants (*e.g.*, illegitimate children) to be joined as respondents.

(d) As to the apportionment and application of the compensation payable by the said C. D. to the dependants of the said A. B. in respect of the injury caused to them by the death of the said A. B.

3. An arbitration under the above-mentioned Act is hereby requested between E. F., the legal personal representative of the said A. B., acting on behalf of the dependants of the said A. B., and the said C. D. for the settlement of the said questions.

4. Particulars are hereto appended.

PARTICULARS.

1. Name and late address of deceased workman.	A. B., of 281, Lower Brick Street, Ludtown.
2. Name, place of business, and nature of business of respondent from whom compensation is claimed.	C. D., "Dulce Domum," River Bank, Ludtown. Army coach.
3. Nature of employment of deceased at time of accident, and whether employed under respondent or under a contractor with him. (*If employed under a contractor who is not a respondent, name and place of business of contractor to be stated.*)	Window cleaner, employed by the respondent, C. D.
4. Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury.	15th March. At the dwelling house, "Dulce Domum," of the respondent. The deceased was on a ladder cleaning the windows of the said house, when it slipped, and he fell into the kitchen area, and was injured.
5. Nature of injury to deceased and date of death.	Injury to the spinal cord and head, from the effects of which he died on 8th April, 19 .
6. Earnings of deceased during the three years next preceding the injury, if he had been so long in the employment of the employer by whom he was immediately employed, or, if the period of his employment had been less than the said three years, particulars of his average weekly earnings during the period of his actual employment under the said employer.	The deceased earned on an average with the respondent and under concurrent contracts of service with other employers 35*s.* a week.
7. Amount of weekly payments (if any) made to deceased under the Act, and of any lump sum paid in redemption thereof.	Nil.
8. Name and address of applicant for arbitration.	E. F., 281, Lower Brick Street, Ludtown.
9. Character in which applicant applies for arbitration; *i.e.*, whether as legal personal representative of deceased or as a dependant, and, if as a dependant, particulars showing how he is so.	As legal personal representative of the deceased and as a dependant also, being his widow, and wholly dependent upon his earnings at the time of his death.

PARTICULARS—*continued.*

10. Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased, and, if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death.	The said E. F., widow of the deceased, and four infant children—S. F., of the age of twenty years; W. F., of the age of sixteen years; A. F., of the age of fourteen years; and M. F., of the age of seven years; the said E. F., A. F., and M. F. being all wholly dependent, and the said S. F. and W. F. being partially dependent on the earnings of the deceased.
11. Particulars as to any persons claiming, or who may be entitled to claim, to be dependants, but as to whose claim a question arises, and who are therefore made respondents, with their names, addresses, and descriptions and occupations (if any).	None.
12. Particulars of amount claimed as compensation, and of the manner in which the applicant claims to have such amount apportioned and applied.	273*l.*, which applicant claims to have paid to herself as administratrix and legal personal representative of the deceased (*a*).
13. Date of service of statutory notice of accident on respondent from whom compensation is claimed, and whether given before deceased voluntarily left the employment in which he was injured. (*A copy of notice to be annexed.*)	On March 30th. Notice of accident was served on the respondent before the deceased voluntarily left the employment in which he was injured. Notice of death resulting from such injuries was served on the respondents on the 10th April, 19 .
14. If notice not served, reason for omission to serve same.	

The names and addresses of the applicant and her solicitor are:—

Of the applicant E. F., of 281, Lower Brick, Ludtown,

And of her solicitor Y. Z., of 61, Lady Street, Ludtown.

The names and address of the respondent to be served with this application are:—

C. D., of "Dulce Domum," River Bank, Ludtown.

Dated this 24th day of April, 19 .

(Signed) Y. Z.,
Applicant's Solicitor.

Notice to respondents that Friday, 17th May, 19 , has been fixed as the day upon which arbitration is to be proceeded with. See Form 13, Appendix A. With this is served foregoing application and particulars, with copies attached of the statutory notices given. It must be served twenty clear days before the hearing. Rule 15 (1). April 24th, 19 . **Form 13.**

(*a*) As to this, see ultimate award where the amount was apportioned. It would, under present Act, be better to give the proposed apportionments.

NOTES.

At this stage it will be well for the respondent to apply for further particulars of the concurrent contracts of service.

It is true the answer of respondent also provides for taking exception to the particulars of the applicant being incomplete or inaccurate, but exception may have to be taken to these very particulars themselves.

So it is well for the respondent to get in black and white as soon as possible such details as these. If honest ones, the applicant will have little trouble furnishing them; if dishonest, the sooner they are required the less time there will be for their manufacture.

As this procedure is not given in the rules under the Act, that of the County Court is to be adopted as far as it is applicable.

Form 99 (under 15, rule 2) can be adapted somewhat as follows:—

[*Heading.*]

Take notice that I intend to apply to the registrar in the matter on the day of May, , for an order for directions that the applicant be directed to deliver within four days particulars of the concurrent contracts referred to in para. 6 of his application for arbitration.

(Signed) W. X.,
Solicitor for respondent.

To the applicant E. F.
and her soliciter Y. Z.

Answer by Respondent (a).

Form 14.

Take notice:—

That the respondent C. D. denies his liability to pay compensation under the Act in respect of the injury to A. B. mentioned in the applicant's particulars, on the grounds stated in the particulars hereto annexed.

PARTICULARS.

1. *Particulars in which the particulars filed by the applicant are inaccurate or incomplete.*

(3) The deceased was not employed by the respondent C. D. as a servant, but as an independent contractor.

(6) The respondent does not admit that the deceased earned on an average with the respondent and under concurrent contracts of service 35*s.* a week. The average weekly earnings of the deceased were less than 20*s.* a week. The said particulars are incomplete, as they do not set out the particulars of such concurrent contracts.

(12) The amount claimed is excessive.

2. Grounds on which the respondents deny their liability to pay compensation:—

(i.) That the deceased A. B. was not a workman to whom the Act applies.

(ii.) That the employment of the deceased was of a casual nature, and that the deceased was employed otherwise than for the purposes of the respondent's trade or business.

(iii.) That the deceased was not employed by the respondent as his servant.

(*a*) To be filed ten clear days before hearing. Rule 17 (1).

And further take notice that the names and addresses of the said respondent and his solicitor are—

Of the respondent C. D.,
"Dulce Domum,"
River Bank, Ludtown.
Of his solicitor W. X.,
3, City Lane, Ludtown.

Dated this 11th day of May, 19 .

(Signed) W. X.,
Solicitor for the respondent C. D.

To the Registrar of the Court, and
to the applicant E. F.

Notices to Produce; and to Inspect and Admit.

These are common forms. There are not usually many documents, but still there may be some which cannot be altogether dispensed with. May 15th, 19 .

They will include here—

(1) Letters (*e.g.*, a post-card from respondent telling applicant to call and clean windows as usual).
(2) Letters of administration.
(3) Notice of accident and registered receipt for same.
(4) Time sheet or wages book, &c. (*e.g.*, suppose a housekeeping book, showing an entry of 2*s.* 6*d.* every fortnight for window cleaning).

The Hearing of the Arbitration.

Having heard the case, his Honour Judge , acting as arbitrator, took time to consider his award. May 17th, 19 .

Judgment delivered. May 27th, 19 .

Copy of Judge's Notes and Judgments.

(Obtained from judge's clerk. Paid him, 6*s.* 4*d.*)

Friday, 17th May, 19 .

Workmen's Compensation Act, 1906.

E. F. - - - - *Applicant.*
C. D. - - - - *Respondent.*

Application for arbitration by legal personal representative of deceased workman, 273*l.*

Mr. T., for applicant.
Mr. L. for respondent.
Mr. T. opened case.
Date of accident, 15th March.
Death, 8th April.
Widow wholly dependent.

Letters of administration.
Children.
Deceased, window cleaner.
At respondent's house—"Dulce Domum."
Fall from ladder.
Serious injuries.
Death, City Hospital.
Employed regularly.
Half-day fortnightly.
For years.
Entries, housekeeping books put in.
Respondent, army coach.
House used for trade or business.
(Mr. L. Respondent not coached for years.)
Concurrent contracts
J. K., L. M., N. P.
Earnings, 35*s*.
Mr. L. Deceased traded as Universal Window Cleaning Company.
Mr. T. Respondent knew facts.
Employed deceased before a company and since.
Post card, addressed Mr. A. B., put in.
No change in incidents.
Mr. T., for applicant:
Ordinary contract master and servant.
Employment regular.
Therefore not casual.
(House used for trade, &c. abandoned.)
Mr. L., for respondent:
(a) Contract. Householder and contractor. Estoppel. Agreed respondent knew facts.
(b) Regular engagement not inconsistent with casual employment.
Class of employment to be considered, not particular instance.

Take time to consider.
Judgment delivered 27th May, .

JUDGMENT.

The applicant in this case was the widow and legal personal representative of her husband, A. B., who died from injuries caused by falling from a ladder when cleaning the window of the private residence of the respondent, C. D.

The respondent is nominally an army coach, and carries on his vocation at such residence, and is not otherwise employed in trade or business.

The facts of the accident are simple and not in dispute, but questions of some difficulty are those of *quantum* and *liability*.

And first as regards liability.

Whilst it is for the applicant to prove his case, we will, for convenience, first state the contention of the respondent.

On his behalf it is said (a) that the applicant was an independent contractor, and (b) that if the deceased was his servant, the employment was of a casual nature, and that the deceased was employed otherwise than for the purpose of his trade or business.

The applicant, on the contrary, submits that the facts show (c) that the ordinary relationship of master and servant existed, and (d) that the deceased, though not employed by the week or for lengthy periods, was yet

employed regularly, and that therefore his employment was not of a casual nature.

As regards (a) the difficulty has arisen owing to the course of business adopted by the deceased. To gain custom and to avoid the benevolence of the Act, the deceased assumed the high-sounding title of the "Universal Window Cleaning Company." Some colour was given to such assumption by the deceased and a friend usually working together, though, as regards the respondent, it is admitted that the deceased, and only the deceased, was employed by him, that he had so employed him before the company came into existence, and that, since the formation of the so-called company, there had not been a change in a single incident of such employment. Therefore it is not necessary for me to inquire into the question of estopped, and how far the deceased, having represented himself as a company, would have been bound by such statement, for the respondent knew the facts, and, knowing them, it was not open to either him or to the deceased to so act as to virtually contract out of the Act. Such contracting out is forbidden by the Act. It cannot be done by express agreement, and I do not think it was intended it should be achieved by colourable devices to the same end. Therefore, if there be a doubt (which, for my part, I do not entertain) as to the true relationship between the parties, yet for the purpose of this arbitration we must take it that such relationship was that of employer and servant, and not that of householder and independent contractor.

Our next inquiry is, the employment having admittedly been regular, was it of a casual nature, and not for the purpose of the employer's trade or business?

It might be contended, though in this case the contention would hardly be well founded, that the cleaning windows would be for the purpose of the trade or business of an army coach. Whilst it would appear that the words "trade or business" are largely used as the antithesis to private or home life generally, yet in mixed cases, involving nice questions of degree, there always must be difficulties as to when a home begins to lose its domestic character and to take on that of a trade or business, as, for example, a school or boarding house; yet in this case it is not so, as the amount of coaching done by the respondent of late years was little more than nominal.

Therefore, for the purpose of this inquiry, it may be taken the domestic character of his house was not changed.

Next, was the employment of the deceased, though regular, of a casual nature?

On behalf of the respondent it has been urged that employment being regular is not of necessity inconsistent with its also being of a casual nature. We are to look, not at the particular employment itself, but at the class of employment to which it belongs. If the characteristics of such class is that it is usually done irregularly, or that it undoubtedly belongs to the category we should term casual, then the particular employment, whether casual or regular, or not, belonging, as it does, to such class, must, in common with such class, be held to be of a casual nature.

The further contention that window cleaning as generally carried on is an employment of a casual nature is, according to the limited evidence before me, well founded.

To these arguments have been replied: If a regular employment is to be considered of a casual nature because the class of employment to which it belongs is held to be so, where are we to draw the line? Is a man regularly employed the whole of his time cleaning the windows of, say, a large country mansion, to be excluded from the Act, and, if not, on what principle is he to be excepted if he only gives half his time, or a day a week, or even half a day? Then, further, arises the almost insuperable difficulty of classifying employments of a casual nature, to say nothing of the added difficulty that the same employment may be carried on under different conditions in different localities.

But against these difficulties, hypothetical difficulties and other difficulties that might be enumerated, to say nothing of the vast field of fact to be inquired into to determine such employment even in one's own district, we have the express words of the Act, and the actual facts of the case itself. These incline one to the view that it was never intended that in the case of a casual (I use the word deliberately, and, as I believe, in its popular and generally received meaning) employment like that of cleaning windows for a householder, even if once a fortnight, that such householder should incur liabilities running into hundreds of pounds.

To find otherwise is practically to rob this exception in the definition of workman of all significance, and to deprive people in their domestic life of an exemption and a protection the law intended them to have.

Finding thus as to liability, it is unnecessary for me to inquire into the equally difficult question of *quantum*.

My judgment must therefore be for the respondent with costs, and I shall award accordingly.

County Court Judge's Award.

Heading as in Application.

Having duly considered the matter entrusted to me,

I do hereby make my award as follows:—

I award and find—

(1) That the employment of the above-named A. B. was not an employment to which the Act applies.

(2) That the employment was of a casual nature, and that the deceased was employed otherwise than for the purposes of the respondent's trade or business, and I do order that the applicant do recover nothing from the respondent.

And I do order that the applicant do pay to the registrar of this Court, for the use of the respondent, his costs of and incidental to this agreement, such costs, in default of agreement between the parties as to the amount thereof, to be taxed by the registrar under column "C" of the scale of costs in use in the County Court, and to be paid by the applicant to the registrar within fourteen days from the date of his certificate of the result of such taxation.

Dated the 27th day of May, 19 .

Respondent's Costs under Award dated 27th May, 19 , to be taxed under Column C.

	Taxed off. £	s.	d.	£	s.	d.
Instructions to defend				0	13	4
Perusing particulars of claim				0	6	8
Drawing answer, including necessary copies				0	6	8
Attending to file				0	3	4
Summons to R. V., witness for respondent				0	5	0
Service, including copy	0	1	6	0	5	0
Perusing applicant's notice to admit facts		...		0	6	8
Drawing and copy admission		...		0	6	8
Attending to deliver		...		0	3	4
Perusing applicant's notice to produce		...		0	6	8
The like applicant's notice to inspect and admit		...		0	6	8
Attending to inspect document pursuant to notice				0	6	8
Instructions for brief	1	1	0	3	3	0
Drawing same, 32 fos.	0	2	0	1	12	0
Fair copy for counsel		...		0	10	8
The like copy answer, 4 fos.		...		0	1	4
Attending on counsel with brief		...		0	6	8
Paid his fee and clerk		...		3	5	6
Attending to appoint conference with counsel and attending thereon		...		0	13	4
Paid his fee and clerk		...		1	6	0
Attending Court on trial (11 to 2.30), when judgment reserved		...		2	2	0
Fee to counsel to hear reserved judgment	1	3	6	1	3	6
Attending him	0	6	8	0	6	8
Attending to hear deferred judgment		...		0	6	8
Perusing draft award		...		0	6	8
Writing applicant's solicitors therewith		...		0	3	6
On receipt of draft approved, writing registrars therewith		...		0	3	6
Drawing bill of costs for taxation, including copy for registrar, 6 fos.		...		0	4	0
Copy for the applicant's solicitor		..		0	2	0
Attending for appointment to tax	0	6	8	0	6	8
Notice of appointment copy and service		...		0	4	0
Attending taxing	0	3	4	0	13	4
Postage, &c.	0	5	0	0	10	0
Paid witnesses (*give details*)	0	5	9	1	1	0
	£3	14	8	£22	8	8
Taxing fee		...		0	7	0
				£22	15	8
Taxed off		..		3	14	8
				£19	1	0

Applicant's Notice of Appeal to the Court of Appeal.

In the Court of Appeal.

No. of Matt .

In the Matter of the Workmen's Compensation Act, 1906,

and

in the Matter of an Arbitration.

Between E. F. widow, administratrix of A. B., deceased - *Applicant*,

and

C. D. - - - *Respondent*.

Take notice that the Court will be moved at the expiration of four clear days from service hereof, or so soon thereafter as the counsel can be heard, by counsel on behalf of the above-named applicant that the award dated the 10th day of May, 19 , made by his Honour Judge , and filed in the County Court of , in respect of the death of A. B., deceased, and the award made in pursuance thereof, may be set aside, and that in lieu thereof an award may be made in favour of the applicant for the sum of 273*l.*, or for such compensation as may be just, or that the matter may be sent back to the judge for him to assess the compensation, and that the respondent may be ordered to pay the costs of the arbitration and the costs of this appeal.

And further take notice that the grounds of appeal are that the judge was wrong in law in finding that the deceased was not employed by the applicant to which the employment was of a casual nature, and that the deceased was employed by the respondent for the purpose of the respondent's trade or business.

And further take notice that the judge was wrong in law—

(a) In finding that the fact of employment being regular was inconsistent with its also being of a casual nature.

Dated the 14th day of June, .

Y. Z.,
Applicant's Solicitor,
61, Lady Street, Ludtow

To A. B., Respondent
and
his Agent.

NOTE.

It is simpler, as to keep to one clear point, and to avoid the innumerable ramifications leading out of a case simple as this, I have numerous facts agreed which in an actual contest would be brought out by the respondent.

It is a great mistake to tie one's hands, so that one could not take a point in a higher Court, and one should not too readily dispense with any favourable evidence, because the judge in the Court below is with you, and does not require to hear you further.

Had the point been a real one, it would have illustrated the danger of abandoning any good point through relying too implicitly on what for the time proved a winning one. The respondent ought to have been in the position to have given notice of cross appeal on the ground—(a) there was no evidence that the

adoption of the trading name of the "Universal Window Cleaning Company" by the deceased was a colourable device to evade the Act; (b) that in law there was nothing to prevent a man trading as an independent contractor, even if its express end was to escape being within the Act.

This case illustrates the danger of agreeing too many facts.

Friday, the 26th day of October, 19 .

Appeal heard and dismissed.

No order taken by the respondent (*a*).

Order ultimately taken up by the applicants on their intending to appeal to the House of Lords.

The Order of the Court of Appeal.

Friday, the 26th day of October, 19 .

In the Supreme Court of Judicature.

COURT OF APPEAL.

In the Matter of the Workmen's Compensation Act, 1906.

In the Matter of an Arbitration in the County Court of , holden at .

Between E. F. (widow), administratrix of A. B., deceased - *Applicant*,

and

C. D. - - - - - - *Respondent*.

Upon reading the notice of appeal on behalf of the applicant, dated the 14th day of June, 19 , and the judge's notes hereon, and upon hearing counsel on both sides. It is ordered that the award of his Honour Judge , the judge of the County Court of , holden at , made in the matter of this arbitration, the 27th day of May last, in favour of the respondent do stand, and this appeal be dismissed with costs, to be paid by the said applicant to the said respondent or his solicitor, such costs, if necessary, to be taxed by the Master of the Crown Office.

Mr. T., for the Applicant.
Mr. G., for the Respondent.
By the Court.

Appeal to the House of Lords.

ENDORSEMENT.

In the House of Lords.

ON APPEAL.

From His Majesty's Court of Appeal.

E. F. - - - - *Appellant*,

v.

C. D. - - - - *Respondent*.

PETITION [illegible]

(*a*) Application should ha[illegible]

In the House of Lords.

ON APPEAL.

From His Majesty's Court of Appeal (England).

To the Right Honourable

THE HOUSE OF LORDS.

The Humble Petition and Appeal of E. F., of 281, Lower Brick Street, Ludtown, widow and administratrix of A. B., deceased.

YOUR PETITIONER humbly prays that the matter of the order of the Court of Appeal set forth in the schedule hereto may be reviewed before his Majesty the King in his Court of Parliament, and that the said order may be reversed, varied or altered, and that the petitioner may have such other relief in the premises as to his Majesty the King in his Court of Parliament may seem meet; and that the respondent C. D., mentioned in the schedule to the appeal, may be ordered to lodge such printed case as they may be advised and the circumstances of the cause may require in answer to this appeal, and that service of such order on the solicitors in the cause of the said respondent may be deemed good service.

Signed by two Counsel N .
T .

SCHEDULE.

From His Majesty's Court of Appeal (England).

In the Matter of an application under the Workmen's Compensation Act, 1906, wherein E. F. was applicant and C. D. was respondent.

The order of the Court of Appeal (England) dated the 26th day of October, 19 , appealed from is in the words following:—

(*Here set out Order as already given.*)

The award, the appeal from which was by the said order dismissed, is an award of the County Court Judge of , in the words following:—

(*Here set out Award as already given.*)

We humbly conceive this to be a proper case to be heard before your Lordships by way of appeal.

Signed by two Counsel N .
T .

Appellant's Case.

[Reported, &c. Emp. & w. Cas. lab. Death by accident. W. C. A. 1906 (6 Ed. 7, c. 58), s. 13.]

In the House of Lords.

ON APPEAL.

From His Majesty's Court of Appeal (England).

Between E. F. (widow), administratrix of A. B., deceased - *Appellant*,
and
C. D. - - - - - - - *Respondent*.

CASE FOR APPELLANT.

Appendix, p. 22. Appendix, pp. 5, 6.

1. This is an appeal from an Order of the Court of Appeal (England), made on the 26th day of October, 19 , dismissing, with costs, an appeal by E. F. against an award of the judge of the County Court of , holden at , dated the 27th day of May, 19 , in an arbitration under the Workmen's Compensation Act, 1906, in which the appellant was applicant and the respondent was respondent.

2. The appellant is the widow and administratrix of A. B., deceased, who was at the time of his decease a window cleaner and in the employment of the respondent, cleaning the windows of his house, "Dulce Domum," River Bank, Ludtown.

The appellant requested the said arbitration under the provisions of the Workmen's Compensation Act, 1906, as the legal personal representative of the said A. B., acting on behalf of the dependants of the said A. B. with respect to the compensation payable to the said dependants under the said Act in respect of the injury caused to the said dependants by the death of the said A. B., which resulted from injury caused to the said A. B. by accident arising out of and in the course of his employment, and the settlement of questions as to who are dependants, and the apportionment and application of such compensation. Appendix, pp. 3—6.

3. By her particulars the appellant stated (*inter alia*) that: –

(4.) The accident took place on the 15th March, 19 , at the dwelling house, "Dulce Domum," of the respondent. The deceased was on a ladder cleaning the windows of the said house when it slipped, and he fell into the kitchen area and was injured.

(5.) The said A. B. sustained injuries to his spinal cord and head, from the effects of which he died on 8th April, 19 .

(6.) The deceased earned on an average with the respondent and under concurrent contracts of service with other employers 35*s.* a week.

(12.) She claimed 273*l.* as the amount of compensation.

4. The respondent, by his answer, denied liability on the ground that the deceased A. B. was not a workman to whom the Act applies, and that the employment of the deceased was of a casual nature, and otherwise than for the purpose of the trade or business of the respondent. Appendix, pp. 7, 8.

5. The arbitration coming on for hearing on the 17th May, 19 , before his Honour Judge , of the County Court of , holden at , the following facts were admitted, as appears from the judge's note and judgment, which are set out on pp. 8 to 10 of the appendix. Appendix, pp. 8, 10.

[*Here facts relied on are set out.*]

6. Upon the above facts the appellant contended that the said A. B. was employed by the respondent as his servant, that he was a workman to whom the Act applies, and that as he had been employed regularly by the respondent for a considerable period this was inconsistent with such employment having been of a casual nature.

7. The respondent, on the other hand, contended (so far as is material to this appeal) that the Workmen's Compensation Act, 1906, did not apply to the employment of the deceased A. B., because such employment was of a casual nature, and otherwise than for the purpose of the trade or business of the respondent.

8. On the 27th May the County Court Judge made his award, holding that the appellant was not entitled to compensation under the Act, on the ground that the employment of the deceased was of a casual nature, and that the deceased had been employed otherwise than for the purposes of the trade or business of the respondent. The award is set out on pp. 13, 14 of the appendix. The reasons for the award are stated in the judgment of the County Court Judge set out on pp. 11, 12 of the appendix. Appendix, pp. 13, 14. Appendix, pp. 11, 12.

9. The appellant, by notice of appeal dated the 14th June, 19 , appealed against the said award.

10. The appeal was heard on the 26th October, 19 , before Lord Justice , Lord Justice , and Lord Justice , and judgment was given the same day, dismissing the appeal with costs, on the ground and for the reasons given by the Judge of the County Court in his judgment.

11. A transcript of the shorthand notes of the judgment is printed on pp. 17 to 21 of the appendix. Appendix, pp. 17, 21.

12. The appellant humbly prays that your Honourable House will be pleased to reverse the order of the Court of Appeal, and that the matter may be remitted to the County Court of , holden at , to assess Appendix, p. 22.

and apportion the amount of compensation payable to the appellant for the following among other

REASONS.

1. THAT upon the true construction of the Workmen's Compensation Act, 1906, the said A. B. was at the time of the said accident a workman within the meaning of the Act.

2. THAT the employment of the said A. B. was regular employment, and therefore within the meaning of the Act.

3. THAT the employment of the said A. B. was not of a casual nature.

(Signed) N. .
T. .

Respondent's Case.

In the House of Lords.

ON APPEAL.

From His Majesty's Court of Appeal (England).

Between E. F. (widow), administratrix of A. B. - - *Appellant*,
and
C. D. - - - - - - *Respondent*.

CASE FOR THE RESPONDENT.

This is an appeal from the Order of His Majesty's Court of Appeal in England, dated the 6th day of October, 19 , affirming an award in the matter of an arbitration under the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), made by his Honour Judge , judge of the County Court of , holden at , whereby it was ordered that the respondent was not liable to pay to the appellant, E. F., any compensation for the death of her husband, A. B., caused by accident whilst the said A. B. was in the employ of the said respondent. A copy of this Order of the Court of Appeal is set out in the appendix, p. 22.

Appendix, p. 22.

1. The appellant was the widow of a deceased workman, A. B., who at the time of the accident causing his death was a window cleaner in the employment of the respondent, at his house "Dulce Domum," River Bank, Ludtown.

2. The subject-matter of this arbitration was a claim made by the appellant against the respondent under the Workmen's Compensation Act, 1906 (6 Edw. c. 58), sect. 1, sub-sect. A (i.) of the 1st schedule, for compensation in respect of the death of her said husband, A. B., alleged to have been caused to him by accident arising out of and in the course of his employment on the 15th March, 19 .

3. The deceased man was a casual labourer employed by the respondent for half a day at a time at intervals of a fortnight for the purpose of cleaning his windows, and was not otherwise employed by him.

4. The accident happened by the ladder on which the deceased was standing slipping, so that he fell from it into the kitchen area and received serious injuries, from which on the 8th April, 19 , he died.

5. The request for arbitration was made by the applicant on the 24th day of April, 19 , the respondent filed his answer on the 11th May, 19 . Copies of the request for arbitration by the applicant, and of the answer thereto by the respondent, are set out in the appendix, pp. 3 to 8.

Appendix, pp. 3—8.

6. The arbitration came on for hearing before his Honour Judge , sitting as arbitrator under the said Act, at , on Friday, the 17th day of May, 19 , on the fact of the accident being admitted by the respondent, the respondent contended that the applicant was not entitled to compensation on the following reasons:—

(1.) That the deceased was not a workman within the meaning of the Act.

(2.) That the deceased had been employed not as a servant, but as an independent contractor.

(3.) That if the deceased had been employed as a servant, his employment was of a casual nature, and he had been employed otherwise than for the purposes of the trade and business of the respondent.

7. His Honour Judge found the deceased had been employed as a servant of the respondent, but decided in favour of the respondent's contention set out in para. 6, sub-sects. (1) and (3). Copies of the arbitration notes and award are set out in the appendix, pp. 8—14. Appendix, pp. 8—14.

8. The applicant, the above-named appellant, duly gave notice of appeal on the 14th day of June, 19 , and appealed against the award to the Court of Appeal. A copy of the notice of appeal is set out in the appendix, pp. 15, 16. Appendix, pp. 15, 16.

9. This appeal came on for hearing on the 26th day of October, 19 , when the same contentions (other than that the deceased had been an independent contractor) which had been advanced before the arbitrator were repeated by the respondent and appellant respectively.

10. The Court of Appeal gave judgment dismissing the appeal, on the ground that the employment of the deceased had been of a casual nature, and otherwise than for the purposes of the respondent's trade or business.

11. The respondent humbly submits that the judgment and order of his Majesty's Court of Appeal are right, and that the arbitrator's award was right, and that they ought to be affirmed, with costs, for the following among other

REASONS.

1. That the employment of the deceased with the respondent was of a casual nature, and that the deceased had been employed otherwise than for the purposes of the respondent's trade or business.

2. Because the judgment of the Court of Appeal is right, and ought to be affirmed.

Signed by Counsel, G .
L .

APPENDIX OF DOCUMENTS.

This appendix is made by the solicitor for the appellant, who communicates with the solicitor for the respondent as to any further documents he wishes included.

The indorsement is similar to that in the petition of appeal.

INDEX OF APPENDIX.

No.	Description of Documents.	Page.
1	Application for Arbitration - - - -	3
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3	Copy, County Court Judge's Note - - -	8
4	Copy, County Court Judge's Judgment - -	11
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In the House of Lords.

An Appeal from His Majesty's Court of Appeal (England).

Between E. F. (widow), administratrix of A. B., deceased - *Appellant,*

and

C. D. - - - - - - *Respondent.*

APPENDIX.

P. 3.

No. 1.

Application for Arbitration.

(Dated 24th April, 19 .)

Appendix, No. 1 (*a*). Application for arbitration dated 24th March, 19 .

In the County Court of .

(*Here follows copy of original application.*)

P. 7.

No. 2.

Respondent's Answer.

(Dated 11th May, 19 .)

Appendix, No. 2. Respondent's answer, dated 11th May, 19 .

(*Here follows copy Respondent's answer.*)

P. 8.

No. 3.

County Court Judge's Notes.

Appendix, No. 3. County Court judge's notes.

(*Here follow copy notes.*)

P. 11.

No. 4.

County Court Judge's Judgment.

Appendix, No. 4. County Court judge's judgment.

(*Here follows copy judgment.*)

P. 13.

No. 5.

County Court Judge's Award.

Appendix, No. 5. County Court judge's award.

(*Here follows copy award.*)

P. 15

No. 6.

Notice of Appeal to the Court of Appeal.

(Dated 14th June, 19 .)

Appendix, No. 6. Notice of appeal to the Court of Appeal, dated 14th June, 19 .

(*Here follows copy notice.*)

(*a*) The marginal notes are continued on the following pages according to subject-matter.

No. 7. P. 17.

Transcript of Shorthand Notes of Judgments of Lords Justices.

Appendix, No. 7. Transcript of shorthand notes of judgments of Lords Justices.

Royal Courts of Justice,
6th October, 19 .

In the Supreme Court of Judicature.
COURT OF APPEAL.

In re the Workmen's Compensation Act, 1906.
In re an Arbitration
Between F. - - -
and
D. - -

Before Lord Justice .
Lord Justice .
Lord Justice .

(From the shorthand notes of Messrs. O. & A., 2, Old Alley, W.C.)

JUDGMENT.

Lord Justice : I am of opinion that this appeal must be dismissed. The question raised is whether, to take an extreme case, a workman who has been employed regularly, say, for three half-days in three successive fortnights, &c.

Lord Justice : I agree. Sometimes the clear words of a clear section of a particularly clear Act of Parliament, &c.

Lord Justice : I agree. I have nothing to add, &c.

Mr. G. : The appeal will be dismissed with costs, my Lord?

Lord Justice : Yes.

No. 8. P. 22.

Order of Court of Appeal.

Appendix, No. 8. Order of Court of Appeal.

(*Here follows copy order.*)

Hearing in House of Lords.

(14th June, 19 .)

Appeal allowed, judgment in Court of Appeal and in the County Court reversed, and case sent back for arbitrator to assess the compensation payable.

In the County Court of , holden at .

In the Matter of the Workmen's Compensation Act, 1906.
No. of Matter, 97.
In the Matter of an arbitration between E. F., of 281, Lower Brick Street, Ludtown, widow, administratrix of A. B. - - - - - *Applicant*,
and
C. D., of "Dulce Domum," River Bank, Ludtown, army coach - - - - - *Respondent*.

Friday, the 8th day of August, 19 .

[Here follows the award by which the arbitrator ordered the sum of 273*l.* to be apportioned between E. F. and her children, S. F., W. F., A. F. and M. F., as follows:—To E. F., for her own benefit, 100*l.*; to S. F., 30*l.*; to W. F., 30*l.*; to A. F., 40*l.*; and M. F., 73*l.*

Further directions to registrar to pay to E. F. 100*l.* and retain 30*l.* for S. F. until the 1st day of September, when she would attain twenty-one, and then to pay her such sum and to retain the remaining sums and invest them and pay the interest to the applicant, to be used on behalf of the remaining children so long as they remained under age, with leave to apply and order for costs.]

Costs taxed, 19th August, 19 .

Applicant's Costs.

	Taxed off. £ s. d.	£ s. d.
Letter before action		0 3 6
Instructions to sue		0 13 4
Writing Mr. N., the county coroner, for depositions taken at the inquest upon deceased	0 3 6	0 3 6
Perusing same, 10 fos.	0 3 4	0 3 4
Writing Mr. N. acknowledging receipt, and with postal order for his charges	0 3 6	0 3 6
Paid	0 10 1	0 10 1
Preparing application for arbitration and particulars and copies		1 1 0
Attending to enter		0 6 8
Perusing answer of respondents		0 6 8
Drawing notice to respondents' solicitors to admit the fact that deceased died from the injuries he received		0 5 0
Service thereof	0 1 0	0 2 6
Perusing defendant's admission	0 5 0	0 5 0
Notice to produce and copy		0 5 0
Service thereof	0 1 0	0 2 6
Notice to inspect and admit and copy		0 5 0
Service thereof	0 2 6	0 2 6
Summons to S. T., witness for applicant		0 5 0
Service and copy		0 3 6
Attending giving inspection pursuant to notice		0 6 8
Instructions for brief	1 1 0	3 3 0
Drawing same, 46 fos.		2 6 0
Fair copy for counsel		0 15 4
Copy application for arbitration to accompany, 8 fos.		0 2 8
The like, answer, 4 fos.		0 1 4
The like, depositions, 10 fos.	0 3 4	0 3 4
The like, letters of administration, 3 fos.	0 1 0	0 1 0
The like, correspondence, 4 fos.		0 1 0
The like, notice to produce, 3 fos.		0 1 0
The like, notice to inspect and admit, 6 fos.		0 2 0
Attending counsel with brief		0 6 8
Paid his fee and clerk		2 4 6
Attending to appoint conference with counsel and attending thereon		0 13 4
Paid his fee and clerk		1 6 0
Attending Court on trial, 11 to 2.30, when judgment reserved		2 2 0
Writing applicant that judgment would be delivered on Monday next at 10 o'clock	0 3 6	0 3 6
Attending to hear judgment		0 6 8
Perusing draft award		0 6 8
Copy to keep	0 1 8	0 1 8
Writing respondents' returning draft award approved		0 3 6
Perusing respondent's costs, 6 fos.	0 4 0	0 4 0
Attending taxing same	0 10 0	0 10 0
Attending paying respondents' taxed costs paid	0 6 8	0 6 8
Attending respondents' solicitors agreeing compensation at 27*l.*, order		0 6 8
Writing registrar appointment before judge to obtain order for same		0 3 6
On receipt of letter from the registrar suggesting Friday, 8th August, writing respondent's solicitors whether that day would suit them		0 3 6

	Taxed off. £ s. d.	£ s. d.
On receipt of reply from respondents, writing registrar requesting him to make the necessary entry -	...	0 3 6
Attending Court when order made for payment of 27*l.* compensation and costs of applicant in the County Court, and of this application to be taxed and respondents to pay back 19*l.* 1*s.*, amount of their taxed costs - - - - - -	0 11 0	1 1 1
Attending the judge to settle draft form of order when he apportioned the compensation to be paid to the widow and the children respectively - -	0 14 4	1 1 0
On receipt of draft order from the registrar, perusing same - - - - - -	...	0 6 8
Attending respondent's solicitors, agreeing draft award, and sending same to registrar - - -	...	0 6 8
Drawing bill of costs for taxation, including copy for registrar, 12 fos. - - - - -	0 1 4	0 8 0
Copy for the respondent's solicitor - - -	0 0 8	0 4 0
Attending for appointment to tax copy and service -	0 3 1	0 13 4
Attending taxing - - - - - -	0 5 0	0 10 0
Letters, &c. - - - - - -		
Paid witnesses, say - - - - -	...	0 8 0
	£6 3 5	£27 17 11
Taxed off - - -	...	6 3 5
		£21 14 6
Paid taxing - - -	...	0 7 0
		£22 1 6

In the Court of Appeal.

Between E. F. - - - - - - *Applicant,*

and

C. D. - - - - - - *Respondent.*

Applicant's Costs.

	Taxed off. £ s. d.	£ s. d.
Instructions to appeal - - - - -	...	0 13 4
Attending bespeaking signed copy of judge's notes and judgment - - - - - -	...	0 6 8
Fair for same - - - - - -	...	0 6 4
Perusing - - - - - -	0 6 4	0 6 4
Drawing notice of appeal, 8 fos. - - -	...	0 8 0
Fee to counsel to settle - - -	...	1 3 6
Attending him - - - -	...	0 6 8
Fair copy notice for service - - - -	...	0 2 8
Service thereof - - - - -	...	0 2 6
Two copies notice of appeal - - - -	...	0 5 4
Copy award, 5 fos. - - - - -	...	0 1 8
Attending entering appeal - - - -		
Paid - - - - - - -	...	2 0 0
Attending searching copy list No. 3 in the list of Workmen's Compensation Appeals - - -		
Instructions for brief on appeal - - - -	0 6 8	0 13 4
Drawing and fair copy, observations for brief to Mr. N., K.C., 12 fos. - - - - -		0 12 0

	Taxed off. £	s.	d.	£	s.	d.
Copy of the following documents to accompany -						
Application for arbitration, 8 fos. - - -		...		0	2	8
Depositions at inquest on deceased before the coroner at Liverpool, 10 fos. - - - -	0	3	4	0	3	4
Answer of respondents, 4 fos. - - -		...		0	1	4
Award of County Court judge, 5 fos. - -		.		0	1	8
Correspondence, 4 fos. - - - - -		.		0	1	4
Copy signed copy of judge's notes on hearing of arbitration, 8 fos. - - - - -	0	2	8	0	2	8
Copy signed copy of judge's judgment in County Court, 20 fos. - - - - -	0	0	4	0	6	8
Notice of motion on appeal, 8 fos. - - -		...		0	2	8
Attending Mr. N., K.C., with brief - -	0	6	8	0	13	4
Paid his fee and clerk - - - - -	3	3	0	16	5	0
Fair copy brief to Mr. T. - - - -		...		0	4	0
Copies of the following documents to accompany application for arbitration, 8 fos. - -		...		0	2	8
Depositions at inquest on deceased taken before coroner, 10 fos. - - - - -	0	3	4	0	3	4
Answer of respondents, 4 fos. - - -		.		0	1	4
Award of County Court judge - - -		.		0	1	8
Correspondence, 4 fos. - - - -		.		0	1	4
Copy signed copy of judge's notes on hearing of arbitration, 8 fos. - - - - -		...		0	2	8
Copy signed copy of judge's judgment in County Court, 20 fos. - - - - -		...		0	6	8
Notice of motion on appeal, 8 fos. - - -		...		0	2	8
Attending Mr. T. with brief - - - -		.		0	6	8
Paid his fee and clerk - - - - -	2	7	0	11	0	0
Attendances searching cause during the sittings -		.		0	13	4
Term fee and letters - - - - -		.		1	1	0
Hilary Sittings.						
Attending searching, when found this 20 out of to-morrow's paper - - - - - -	0	3	4	0	3	4
Attending searching, when found this would probably be in the paper on Friday - - - -				0	3	4
Attending Mr. N.'s senior clerk, when he pointed out that Mr. N. would be going away early next week, and it would be necessary to have the appeal postponed - - - - - -						
Attending respondent's agents, but at present they were without instructions - - - -	0	3	4	0	3	4
Attending respondent's agent obtaining consent for this not to be in the paper until 30th March -	0	6	8	0	6	8
Attending getting the appeal postponed until Mr. N.'s return - - - - - - -		...		0	6	8
Three copies of documents for Court, 60 fos. each -		...		3	0	0
Attending judge's clerk and lodging same - -		...		0	13	4
Attending searching, when we found the appeal had been passed over, but would be in the paper when this list was next taken - - - -		..		0	6	8
Attending searching, when found these cases would not be taken before Saturday, and that this would be in the paper on the first day - - - -		...		0	3	4
Attending searching, when found that it was probable the Court of Appeal would take these cases on Tuesday - - - - - - -	0	3	4	0	3	4
Term fee and letters - - - - -		..		1	1	0

Easter Sittings.

	Taxed off. £ s. d.	£ s. d.
Attending searching this 7 in to-morrow's paper -		0 3 4
Attending Court all day, appeal not reached - -	0 3 4	0 10 0
Attending searching appeal, in the list again to-morrow		0 3 4
Attending Court all day, appeal not reached - -	0 3 4	0 10 0
Attending searching cause list, this in to-morrow -		0 3 4
Attending appointing consultation - - -		0 6 8
Consultation fee to Mr. N. and clerk - - -		2 7 0
Attending appointing consultation with Mr. T. -		0 6 8
Consultation fee to him and clerk - - -		1 3 6
Attending consultation - - - -		0 13 4
Attending Court all day, appeal not reached - -	0 3 4	0 10 0
Attending searching cause list, appeal in to-morrow -		0 3 4
Attending instructing shorthand writer - -	0 6 8	0 6 8
Paid his fee - - - - - -	1 1 0	1 1 0
Attending Court of Appeal when this called on, and in the unavoidable absence of Mr. N., Mr. T. argued the appeal, and the Court, without calling upon respondents, dismissed the appeal with costs -		1 1 0
Country solicitor's manager's journey to London from on 2nd, attending Court on 3rd, 4th, 5th and 6th, and journey to on 6th, 5 days -	2 12 6	2 12 6
Expenses - - - - - -	2 10 0	2 10 0
Railway expenses and cabs - - - -	3 16 0	3 16 0
Term fee and letters - - - - -		1 1 0

Trinity Sittings.

Drawing bill of costs and copies, 18 fos. - -		0 18 0
Attending fee and obtaining appointment to tax -		0 3 4
Notice of appointment, copy and service - -		0 4 0
Attending taxing - - - - -		0 6 8
Term fee and letters - - - - -		1 1 0
	£18 15 2	£68 19 0
Taxed off - - -		18 15 2
		£50 3 10
Taxing fee - - -		1 6 0
		£51 9 10

In the House of Lords.

Between E. F. - - - - - - - *Appellant,*

and

C. D. - - - - - - - *Respondent.*

Appellant's Costs.

	Taxed off. £ s. d.	£ s. d.
Attending the appellant, &c. - - - -		0 13 4
Instructions for appeal and instructions for petition -		0 13 4
Drawing same, 12 fos. - - - -		1 4 0
Fair copy for Mr. T. to settle and sign, 12 fos. -		0 6 0
Fee to Mr. T. to settle same - - - -		3 15 0
Attending him - - - - -		0 10 0

	Taxed off. £	s.	d.	£	s.	d.
Drawing retainer to Mr. T.				0	10	0
Fee to him and clerk				2	7	0
Attending him				0	10	0
Not having heard from Messrs. S. & H., nor having been served with copy order: Attending them when they stated they did not intend to take up the order, and authorized agents to do so	0	6	8	0	6	8
Attending for and obtaining order				0	6	8
Paid				1	0	0
Copy for service, 4 fos.	0	1	4	0	1	4
Service thereof	0	2	6	0	2	6
Close copy	0	1	4	0	1	4
Copy petition and order for printer, 12 fos.				0	6	0
Attending instructing printer				0	10	0
Drawing retainer to Mr. N., K.C.				0	10	0
Fee to him and clerk				2	7	0
Attending him				0	10	0
Fair copy appeal for Mr. N., K.C. to settle and sign				0	6	0
Paid his fee and clerk				5	15	6
Attending him therewith				0	10	0
Attending obtaining petition printed on parchment						
Examining and correcting proof				0	2	0
Attending obtaining Mr. T.'s signature	0	6	8	0	6	8
Attending Chief Clerk of House of Lords, making appointment for to-morrow						
Attending Chief Clerk of House of Lords, going through petition with him. When he thought petition might pass, if we had no objection, he would prefer it to be treated as a draft and reprinted on parchment, which we undertook to do	0	10	0	0	10	0
Attending printer, instructing him to reprint on parchment and the usual 60 copies				0	10	0
Attending obtaining prints of petition						
Paid printer				1	18	6
Attending paying	0	10	0	0	10	0
Notice of intention to present copy and service on respondent's agents				0	10	0
Copy notice for country solicitor	0	1	0	0	1	0
Attending obtaining cheque for 200*l.* to deposit as security for costs	0	6	8	0	6	8
Attending lodging petition of appeal to the House of Lords, but as the House was not sitting, it could not actually be presented until to-morrow				1	1	0
Attending at Parliamentary office intimating to the officers the appellant's intention with regard to the recognizances				0	10	0
Instructions for appellant's case				1	0	0
Drawing same, 25 fos.				2	10	0
Copy for Mr. T. to settle and sign				0	12	6
Paid shorthand writer				1	17	0
Copy transcript of judgment for him, 20 fos.				0	6	8
Fee to him and clerk				5	15	6
Attending him				0	10	0
Copy case for Mr. N. to settle and sign				0	12	6
Copy transcript of judgment for him, 20 fos.				0	6	8
Fee to him and clerk				11	6	6
Attending him				0	10	0
Attending paying 200*l.* to the House of Lords Security Fund				0	10	0

	Taxed off. £	s.	d.	£	s.	d.
Attending obtaining order of service				0	10	0
Copy for service on respondent and service thereof				0	10	0
Close copy order of service sent to country solicitor	0	1	4	0	1	4
Attending Mr. T. to ascertain when he could have a consultation with Mr. N.	0	6	8	0	6	8
Attending Parliamentary office obtaining recognizance for execution				0	10	0
Perusing recognizance	0	6	8	0	6	8
Writing Mrs. F., the appellant, making appointment for her to call to sign recognizance	0	3	6	0	3	6
Attending Mr. N. when he had not settled the case, and thought it much better to have a consultation, if possible, and fixed Tuesday, at 4 o'clock	0	6	8	0	6	8
Attending appellant on her calling, reading over recognizance to her, and with her on her executing same before Commissioner for Oaths				0	10	0
Paid Commissioner				0	10	0
Attending Mr. T., arranging consultation for Tuesday next				0	10	0
Attending Mr. N., K.C., fixing consultation				0	10	0
Consultation fee to Mr. N., K.C., and clerk				5	15	6
Consultation fee to Mr. T. and clerk				5	15	6
Attending House of Lords, searching petition in former case	0	6	8	0	6	8
Drawing list of documents and copy for respondent's agents, 4 fos.				0	5	4
Attending them therewith and therewith				0	10	0
Attending consultation when appellant's case settled, and Mr. N. promised to sign and let agents have same to-morrow, if possible				1	0	0
Attending filing recognizances at Judicial Office				0	10	0
Attending respondent's agents, settling list of documents for appendix				0	10	0
Making up and arranging documents in accordance with the list as arranged with respondent's agents				1	0	0
Attending Mr. T. with draft case, when he made some slight alterations, and signed same subject to such alterations	0	6	8	0	6	8
Attending respondent's agents, and arranging appointment to attend to inspect documents for appendix				0	10	0
Fair copy documents for appendix for printer, 10 fos.				1	0	0
Attending printer therewith				0	10	0
Copy receipt for payment of 200*l.*, security for costs	0	1	0	0	1	0
Notice of payment and lodging recognizance at Judicial Office, copy and service				0	4	0
Attending examining documents mentioned in the respondent's appendix with respondent's agents, 80 fos.				0	13	4
Writing country solicitor with draft appendix, as there were several blanks in same which neither agents nor respondent's agents could fill in	0	5	0	0	5	0
Country solicitor perusing proof of appendix and filling in blanks, 80 fos.	1	6	8	1	6	8
Attending printers, instructing them to print appendix				0	10	0
Paid printer's account	4	19	6	12	12	0
Attending paying same				0	10	0
Drawing affidavit of service of order and engrossing same				0	10	0
Attending to be sworn				0	10	0

	Taxed off. £ s. d.	£ s. d.
Preparing exhibit - - - -	0 1 0	0 1 0
Paid oath and exhibit - - - -	...	0 2 6
Attending at Parliamentary office, filing order and affidavit - - - - - -	.	0 10 0
Writing respondent's agents in reply to theirs that they were sorry to hear of the illness of Mr. G., K.C., and that they had no objection to the time for lodging their case standing over as desired - -	..	0 5 0
Copy their letter sent to country solicitor - -	0 1 0	0 1 0
Perusing same - - - - - -	0 1 0	0 1 0
Copy case as finally settled for printer, 25 fos. -	0 12 6	1 5 0
Attending printer therewith and giving him instructions - - - - - -	.	0 10 0
Examining and correcting proof - - -	.	0 4 2
Attending printer, instructing him - - -	..	0 10 0
Paid - - - - - - -	0 13 6	3 13 0
Attending paying - - - - -		0 10 0
Attending Parliamentary office, lodging case and appendix - - - - - -	.	1 1 0
Drawing motion to set down cause for hearing -	.	0 10 0
Attending House when motion made - - -	.	1 1 0
Attending exchanging cases with respondent's agents	.	0 10 0
Perusing respondent's case, 21 fos. - - -	..	0 7 0
Preparing documents for the binder and instructing him - - - - - - -	.	0 10 0
Paid binder's account - - - - -	0 18 0	3 18 0
Attending paying same - - - -	0 3 4	0 10 0
Attending binder, obtaining bound copies - -		
Attending Clerk of the Table with bound cases for use of the Law Lords - - - - -	..	0 10 0
Writing Messrs. S. & H. that joint case lodged, and as to supplying them with copies and attending supplying same - - - - -	.	0 10 0
Attending Mr. , Clerk to the House of Lords, when it appeared that no more appeals would be heard during the present session, and he advised us he would not revise and make up the list for next session until October; therefore nothing further would be done until then - -	0 6 8	0 6 8
Attending at House of Lords, when we saw Mr. , and ascertained this was No. 13 in the list, which would commence on Tuesday, 13th Nov. - -	0 10 0	0 10 0
Attending House of Lords in long discussion with Mr. , and pointing out this case involved the same point as the S. v. F. appeal, when he was obliged to us for pointing out the nature of this appeal, and he would at once lay the matter before the Lord Chancellor to decide as to what course should be adopted - - - - -		0 10 0
Attending at the House of Lords, when Mr. being away, they could not get definite information as to this appeal, and they were informed the question as to hearing was still in consideration, and that the House was now taking the appeals from Lord Justice - - - -	0 10 0	0 10 0
Attending Mr. N. with brief - - - -	..	2 2 0
Fee to him and clerk - - - - -	..	55 2 6
Attending Mr. T. with brief - - - -	..	1 0 0

	Taxed off. £ s. d.	£ s. d.
Fee to him and clerk	...	37 15 0
Attending House of Lords, when it appeared the Lord Chancellor had not yet decided anything as to the hearing of the appeal, and they were informed that there was a case, No. 15 in the list, which would take at least a week, so that there would be no chance of this next week		0 10 0
Attending House of Lords, when found this was in the list for to-morrow		0 10 0
Attending to send telegram to country solicitor	0 3 4	0 3 4
Paid	0 0 6	0 0 6
Attendances upon counsel, and eventually arranging consultation for 10.45 to-morrow morning at Mr. N.'s chambers		
Consultation fee, Mr. N., K.C., and clerk		5 15 6
Attending him		0 10 0
Consultation fee to Mr. T. and clerk		5 15 6
Attending him		0 10 0
Attending consultation	...	1 0 0
Attending House of Lords when case part heard and adjourned until to-morrow		3 6 8
Attending instructing shorthand writer	0 6 8	0 6 8
Paid shorthand writer's charges	2 2 0	2 2 0
Refresher fee to Mr. N. and clerk		11 0 6
Attending him	...	0 10 0
Refresher fee to Mr. T.	...	7 14 0
Attending him	...	0 10 0
Paid shorthand writer	2 2 0	2 2 0
Attending House of Lords; arguments completed and judgment given reversing decision of County Court judge and Court of Appeal with costs	...	3 6 8
Country solicitor: journey to London from on June 12th, attending Court on 13th and 14th, and journey and return to Liverpool, three days	10 10 0	10 10 0
Expenses	3 3 0	3 3 0
Railway expenses and cabs	3 10 0	3 10 0
Attending bespeaking transcript of judgment, and on June 17th attending obtaining same	0 6 8	0 6 8
Paid for same	3 13 6	3 13 6
Writing country solicitor therewith		
Postage	0 0 5	0 0 5
Perusing draft judgment		0 10 0
Copy sent country solicitor and agents; requested country solicitor to show same to Mr. T. for him to approve same	0 2 0	0 2 0
Attending respondent's agents therewith	0 10 0	0 10 0
Attending Mr. T. with draft judgment, when he approved of same	0 6 8	0 6 8
Writing agents returning same	0 5 0	0 5 0
Attending House of Lords, when draft order approved	..	0 10 0
Attending Mr. , when he informed us that an official intimation would be given by the Clerk of the Parliament to the County Court and order sent to him in due course	0 10 0	0 10 0
Paid House of Lords' fees	...	19 15 6
Session fee	...	4 4 0
Cab hire, letters, messengers, &c.	2 2 0	2 2 0
Attending at judicial office to receive back 200*l.*	..	0 10 0

	Taxed off. £ s. d.	£ s. d.
Drawing bill of costs for taxing officer, 46 fos. -	...	3 9 0
Attending him therewith and obtaining appointment to tax - - - - - -	...	0 10 0
Making copy costs for respondent's agents, 46 fos. -	...	1 3 0
Attending them therewith and with notice of appointment to tax - - - - - - -	...	0 10 0
Attending taxing - - - - - -		2 2 0
Paid fees for taxing - - - - -		
Attending settling costs - - - -		0 13 4
	£11 12 5	£317 8 3
Taxed off - - -		41 12 5
		£275 15 10
Taxing fee -		6 18 0
		£282 13 10

Application for Security for Costs.

The right to security is found in Ord. LVIII. r. 15, where "special circumstances" warrant the making the order. "Special circumstances are *(inter alia)* "whenever the respondent could show that the appellant was a person from whom the respondent would be unable to get the costs of the appeal if the appeal were unsuccessful": Lord Justice A. L. Smith in *Hall* v. *Snowden*, (1899) 1 Q. B. 594. (See also question discussed in *Pure Spirit Coy.* v. *Fowler*, 25 Q. B. D. 235.)

Heading *as in Notice of Appeal*.

Take notice that this honourable Court will be moved on day, the day of , 19 , or so soon thereafter as counsel can be heard by counsel for the above-named respondent for an order that the applicant do within fourteen days from the date of such order give security in the sum of twenty pounds (*a*), for the costs of and occasioned by his appeal herein under the notice of appeal, dated the day of , 19 , from the award of his Honour Judge , dated the day of , 19 , and that until such security be given the said appeal be stayed, and that in default of such security being given within the aforesaid time the said appeal stand dismissed without further order, with costs to be taxed and paid by the applicant to the respondent: And that the costs of this application abide the result of this appeal.

Dated the day of 19 .

Yours, &c. W. X.,
Solicitor for the above-named respondent.

To the above-named applicant,
and to Mr. Y. Z., his solicitor or agent.

(*a*) 15*l.* is usually ordered.

Affidavit in Support.

Heading (*as in Notice of Appeal*).

I, C. D. [*give name, address and occupation*], the above-named respondent, make oath and say as follows:—

1. On the day of 19 , an application for arbitration under the above Act by the above-named applicant was heard by his Honour Judge who dismissed the same, and made an award in my favour with costs.

2. The said applicant, on the day of 19 , served notice of appeal against the said award.

3. My costs under the said award have been taxed and allowed at *l.*, but the applicant has not paid the same nor any part thereof.

4. The said applicant has no visible means of paying my costs of the said appeal in case he is ordered to do so [*state any special facts proving this*].

5. *Show means of knowledge or belief.*]

Sworn, &c. (Signed) C. D.

As regards these bills of costs, I need not point out that (to save space in printing) they slightly vary in form from those in actual use as out-of-pocket expenses, and profit costs ought to have been given in distinct columns. So as regards the respondents' bills in the House of Lords and Court of Appeal, amounting to 246*l.* 17*s.* 1*d.*, they, not having been taxed, are not of sufficient authority to justify their being included here.

The case is rather an example of how disastrous an unsound victory in the first instance may prove to respondents, and there is no doubt that their advisers will save themselves much anxiety if, after the first win in the County Court, they once again reconsider the whole case in the light of concluded facts. If there is the least doubt as to the law involved, they should get a copy of the judge's notes (*a*), and, with these before them, once more go into the whole matter. If they do this, they should be able to arrive at a fairly correct conclusion. The difficulty as regards most legal opinions is that they are based on supposed facts, which by no means turn out to be identical with those proved at the trial. But with the judge's notes before him a lawyer can view the case as it will be reviewed in a higher Court. With this advantage he ought to be able to give a fairly sound opinion in every case. It may be that such opinion might take the form the law is unsettled, and, as in the case of casual labour, that two opposite views might both be urged with equal chances of success. If this be so, it then really becomes a matter for the client to calculate the business chances as to whether it is better worth his while to settle, as he probably can do on favourable terms, or try to maintain the judgment in his favour.

In these cases, when a respondent is usually a valuable client, a lost action is a serious matter to his adviser; but I do not see that the most captious can grumble if, when fully informed of the risks, he takes the responsibility of the further proceedings. Not even a lawyer can command success. The most he can do is to deserve it. But in this world who gets his deserts?

(*a*) Rule 31 p. 371.

Costs applicable to Arbitration Proceedings.

Applicant's Costs.

		Scale B. Above £20, up to £50. £ s. d.	Scale C. Above £50. £ s. d.
96.	Letter before action - - -	0 3 6	0 3 6
12.	Preparing statutory notice -	0 1 6	0 1 6
18.	Copy and service - - -	0 2 6	0 2 6
20.	Instructions to sue - - -	0 6 8	0 13 4
2.	Preparing particulars and copies -	0 12 0	1 1 0
41.	Three copies statutory notice to accompany, per folio - - -	0 0 4	0 0 4
93.	Fee to counsel to settle particulars (if necessary) - - - -	1 3 6	1 3 6 / 2 4 6
67.	Attending him - - - -	0 3 4	0 3 4 / 0 6 8
54.	Attending entering application - -	0 6 8	0 6 8
14.	Service - - - - -	0 5 0	0 5 0
18.	If on solicitor - - - -	0 2 6	0 2 6
83.	Attending filing application, and particulars duly endorsed - -	0 3 4 / 0 6 8	0 6 8
40.	Affidavit of service, including engrossing, attendance to be sworn, oath, and filing - - - - -	0 2 0	0 3 4
11.	Notice of application for directions as to conduct of arbitration - -	0 3 0	0 5 0
18.	Service - - - - -	0 2 6	0 2 6
66.	Attending application - - -	0 3 4	0 6 8
44.	Copy order to serv - - -	0 1 0	0 1 0
	or per folio - - - -	0 0 4	0 0 4
18.	Service - - - - -	0 2 6	0 2 6
63.	Respondent having required further particulars, attending applicant, receiving instructions - - -	0 6 8	0 6 8
4.	Preparing further particulars, including copies to file and serve - -	0 3 0	0 5 0
	or per folio - - - -	0 0 8	0 1 0
55.	Attending to file - - - -	0 3 4	0 3 4
	Attending to deliver copy to respondent	0 3 4	0 3 4
	Writing respondent's solicitors for production of wages book to calculate average weekly earnings - -	0 3 6	0 3 6
12. 18.	Notice to respondent with appointment to attend and inspect book and service	0 4 0	0 4 0
57.	Attending inspecting time sheets and wages book, and taking notes - -	0 6 8	0 6 8
	or per hour - - - -	0 6 8	0 6 8
63.	On receipt of letter from respondent's solicitors attending client arranging for him to submit to a further medical examination - - - -	0 6 8	0 6 8
	Writing respondent's solicitors in reply admitting amount of average weekly wage - - - - -	0 3 6	0 3 6
45.	Perusing respondent's answer - -	0 3 4	0 6 8

		Scale B. Above £20 up to £50. £ s. d.	Scale C. Above £50. £ s. d.
45.	or per folio	0 0 4	0 0 4
63.	Attending client thereon, and as to offer received	0 6 8	0 6 8
26.	Instructions to counsel to advise on evidence	0 3 4	0 6 8
91.	Paid his fee and clerk	1 3 6	2 4 6
67.	Attending him	0 3 4	0 6 8
	Writing respondent's solicitors declining offer made	0 3 6	0 3 6
11.	Notice of application for discovery, including copies to file and serve	0 3 0	0 5 0
18.	Service	0 2 6	0 2 6
66.	Attending application	0 3 4	0 6 8
41.	Copy order for service	0 1 0	0 1 0
	Copy receipt for deponent	0 1 0	0 1 0
18.	Service	0 2 6	0 2 6
52.	Perusing affidavit of documents per folio	0 0 4	0 0 4
12.	Notice of appointment to inspect documents, and copy to serve	0 1 6	0 1 6
18.	Service	0 2 6	0 2 6
57.	Attending to inspect documents	0 6 8	0 6 8
	or per hour	0 6 8	0 6 8
58.	If place of inspection more than two miles away, travelling expenses in addition not exceeding	1 0 0	1 0 0
	Weekly payment offered and accepted:—		
63.	Attending client taking instructions to accept the weekly payment specified in respondent's notice	0 6 8	0 6 8
12.	Drawing notice of acceptance, including copies to file and serve	0 1 6	0 1 6
13.	In addition for each folio beyond three, including copy to file	0 1 0	0 1 0
59.	Attending filing	0 3 4	0 3 4
18.	Service on respondent	0 2 6	0 2 6
11.	Copy notice for service on each of the other respondents, per folio	0 0 4	0 0 4
18.	Service, each respondent	0 2 6	0 2 6
11.	Preparing notice of application to judge to make award, including copies to file and serve	0 3 0	0 5 0
	If exceeding three folios, for each folio beyond three, including copy to file	0 1 0	0 1 0
18.	Service	0 2 6	0 2 6
59.	Attendance on each of the other respondents obtaining consent	0 3 4	0 6 8
64.	Attending application	0 6 8 0 13 4 0 10 6	0 10 0 1 1 0 1 1 0
28.	Instructions for brief	1 11 6	3 3 0
31.	Drawing same, per folio	0 1 0	0 1 0
43	Fair copy, per folio	0 0 1	0 0 4
	Copy correspondence to accompany, per folio	0 0 1	0 0 4
	Copy particulars, answer and notices, per folio	0 0 4	0 0 1

		Scale B. Above £20, up to £50. £ s. d.	Scale C. Above £50. £ s. d.
7.	Notice to produce, and copy	0 4 0	0 5 0
8.	if long, per folio	0 0 8	0 0 8
18.	Service	0 2 6	0 2 6
7.	Notice to admit, copy and service	0 6 6	0 7 6
8.	if long, per folio	0 0 8	0 0 8
5.	Subpœna for attendance of witnesses	0 3 0	0 5 0
	or per folio beyond four		0 0 8
18.	Service	0 2 6	0 2 6
	Paid conduct money		
48.	Perusing respondent's notice to produce	0 5 0	0 6 8
	The like to admit	0 5 0	0 6 8
67.	Attending counsel with brief	0 3 4	0 6 8
85.	Paid his fee and clerk, not to exceed	3 5 6	5 10 0
68.	Attending to appoint conference and attendance thereon	0 6 8	0 13 4
87.	Paid counsel's fee and clerk	1 6 0	1 6 0
	Paid qualifying fee to Dr. Brown		
	Paid qualifying fee to Dr. Smith		
98.	Notices to witnesses to attend hearing, each letter	0 1 0	0 1 0
71.	Attending Court on hearing of application with counsel, when, after hearing the evidence, the judge adjourned the hearing and referred the case to the medical referee	1 1 0	1 1 0 2 2 0
74.	Travelling expenses, if place of trial more than two miles away, not exceeding each day	1 1 0	1 1 0
75.	In addition, if solicitor cannot travel to and from the Court the same day	1 1 0	1 1 0
57.	Attending inspecting medical referee's report and taking note	0 6 8	0 6 8
71.	Attending Court on adjourned hearing when order made in applicant's favour, with costs	1 1 0	2 2 0
54	Perusing draft award	0 3 4	0 6 8
	Writing respondent's solicitors with award for approval	0 3 6	0 3 6
83.	Attending filing same for settlement by judge	0 3 4 0 6 8	0 6 8
44.	Engrossing award, per folio	0 0 4	0 0 4
	Copy for service, per folio	0 0 4	0 0 4
80.	Attending to get same sealed	0 3 4 0 6 8	0 6 8
	Paid fee.		
18.	Service of award on respondent's solicitor	0 2 6	0 2 6
42.	Drawing bill of costs and copy, per folio	0 0 8	0 0 8
44.	Copy for respondent, per folio	0 0 4	0 0 4
83.	Attending obtaining appointment to tax	0 3 4 0 6 8	0 6 8
12, 18.	Notice to tax copy and service	0 1 0	0 4 0
82.	Attending taxing	0 6 8	0 6 8 0 13 4

			Scale B. Above £20, up to £50. £ s. d.	Scale C. Above £50. £ s. d.
101.	Letters, messengers, &c.	- -	0 5 0	0 10 0
	Paid taxing fee	- - -	0 10 0	0 10 0
	Paid witnesses:—			
	Applicant	- - - -		
	Dr. Brown, &c., &c.	- - -		
	Arbitration by Consent.			
63.	Attending applicant taking instruction		0 6 8	0 6 8
83.	Attending respondent obtaining consent to refer action to arbitration	-	0 6 8	0 6 8
	Attending registrar obtaining order of reference	- - - -	0 6 8	0 6 8
	Attendance on arbitrator therewith	-	0 6 8	0 6 8
	Attending respondent's solicitor and arranging with him and arbitrator as to date of hearing	- -	0 6 8	0 6 8
98.	Circular letter to witnesses	- -	0 1 0	0 1 0
	(Brief. *See above.*)			
79.	Attending on reference if without counsel	- - - -	1 1 0	1 1 0 / 2 2 0
80.	With counsel	- - - -	0 15 0	1 1 0
81.	If sitting exceeds three hours, for each additional hour	- -	0 6 8	0 10 0
11.	Preparing notice of application to enter judgment on award, if necessary, and copies to file and serve	- -	0 3 0	0 5 0
13.	or per folio	- - - -	0 1 0	0 1 0
83.	Attending filing notice	- -	0 3 4 / 0 6 8	0 6 8
64.	Attending Court making application for judgment when same entered	-	0 6 8 / 0 13 4	0 10 0 / 1 1 0
66.	If judgment entered by registrar. Attending registrar making application to enter judgment on award	-	0 3 4	0 6 8
	Notice of Claim to Indemnity.			
63.	Attendance on respondent	- -	0 6 8	0 6 8
13.	Drawing notice of indemnity over against A. B. not a party to the arbitration, per folio, including copy to file	- - - -	0 1 0	0 1 0
83.	Attending to file	- - -	0 3 4 / 0 6 8	0 6 8
11.	Making copies of applicant's particulars and notice, per folio	- -	0 0 4	0 0 4
11.	Service on person against whom claim made	- - - -	0 5 0	0 5 0
	Mileage, for every mile beyond two miles but not exceeding ten miles	-	0 0 6	0 1 0
18.	Service through solicitor	- -	0 2 6	0 2 6
83.	Attending filing notice duly endorsed	-	0 3 4 / 0 6 8	0 6 8

		Scale B. Above £20, up to £50. £ s. d.	Scale C. Above £50. £ s. d.
	Answer by Respondent.		
20.	Instructions for answer - -	0 6 8	0 13 4
32.	Drawing same, per folio - -	0 1 0	0 1 0
14.	Copy to file, per folio - -	0 0 4	0 0 4
83.	Attending to file - - -	0 3 4 / 0 6 8	0 6 8
14.	Copies for applicant and for each of the other respondents, per folio - -	0 0 4	0 0 4
14.	Service on each - - -	0 5 0	0 5 0
18.	If on solicitor - - -	0 2 6	0 2 6
	Stay of Proceedings (Rule 16).		
63.	Attending respondent taking instructions to apply for stay of proceedings	0 6 8	0 6 8
32.	Drawing undertaking to be bound by award in such one of the arbitrations as might be selected by the judge, and fair copy - - -	0 5 0	0 6 8
	or per folio - - -	0 1 0	0 1 0
63	Attending client obtaining his signature thereto - -	0 6 8	0 6 8
83.	Attending filing - -	0 3 4 / 0 6 8	0 6 8
14.	Preparing notice of application to stay proceedings in the arbitrations other than the one selected - -	0 5 0	0 5 0
18.	Service - - -	0 2 6	0 2 6
66.	Attending application - -	0 6 8	0 6 8
14.	Copy notice to serve, per folio - -	0 0 4	0 0 4
18.	Service - - -	0 2 6	0 2 6
	Submission to Award.		
63.	Attending respondent, taking instruction to give notice of submission to award - - -	0 6 8	0 6 8
32.	Preparing notice of submission and copy to file - - -	0 5 0	0 6 8
	Or per folio, including copy -	0 1 0	0 1 0
83.	Attending filing - - -	0 3 4 / 0 6 8	0 6 8
	Payment into Court by Respondent.		
63.	Attending respondent and taking instructions to pay sum of money to cover liability - - -	0 3 4 / 0 6 8	0 6 8
83.	Attending making payment into Court	0 6 8	0 6 8

For other items of the respondent's costs, see corresponding items in the applicant's costs.

APPENDIX C.

GOVERNMENT ANNUITIES AND LIFE INSURANCES.

Annuities.

Immediate annuities from 1*l.* up to 100*l.* may be purchased through the agency of the Post Office Savings Bank, on the life of any person over five years of age. If the amount of an annuity purchased is less than 100*l.*, further annuities may be purchased until that limit is reached. These annuities are payable by equal half-yearly instalments on the 5th January and the 5th July, or on the 5th April and the 10th October, according to the date of purchase.

A form of proposal can be obtained at any post office transacting Savings-Bank business.

Terms of Purchase.

The sums charged for the purchase of immediate annuities vary with the age and sex of the person on whose life the annuity is to depend, and a certificate of birth or baptism is required as evidence of age. Full tables of rates can be seen at any post office transacting Savings Bank business, and the cost of an annuity in any particular instance and any other information can be obtained on application to the Controller of the Savings Bank.

Life Certificates.

Before any half-yearly instalment of an annuity can be paid, the person on whose life the annuity depends must be proved to be alive on the date the instalment becomes due. A form of life certificate for this purpose is provided by the Postmaster-General.

POST OFFICE SAVINGS BANK.

Immediate Life Annuities.

Table showing the sum for which an immediate life annuity of 1*l.* will be granted. The first half-yearly instalment of such annuity will become due and payable on the second quarterly day of payment next following the day of purchase.

Age at time of Purchase.	Males. Cost of an Immediate Annuity of £1.	Females. Cost of an Immediate Annuity of £1.
	£ s. d.	£ s. d.
If 5 & under 6	25 10 0	27 12 6
6 „ 7	25 15 1	27 9 1
7 „ 8	25 11 1	27 5 8
8 „ 9	25 7 0	27 2 2
9 „ 10	25 2 11	26 18 8
10 „ 11	24 18 10	26 15 1
11 „ 12	24 14 9	26 11 6
12 „ 13	24 10 6	26 7 10
13 „ 14	24 6 1	26 4 1
14 „ 15	24 2 1	26 0 4
15 „ 16	23 17 10	25 16 9
16 „ 17	23 13 6	25 12 7
17 „ 18	23 9 1	25 8 8
18 „ 19	23 4 9	25 4 8
19 „ 20	23 0 4	25 0 8
20 „ 21	22 15 10	24 16 6
21 „ 22	22 11 7	24 12 4
22 „ 23	22 6 9	24 8 1
23 „ 24	22 2 3	24 3 10
24 „ 25	21 17 7	23 19 5
25 „ 26	21 12 11	23 15 0
26 „ 27	21 8 3	23 10 6
27 „ 28	21 3 6	23 5 11
28 „ 29	20 18 9	23 1 3
29 „ 30	20 13 11	22 16 6
30 „ 31	20 9 1	22 11 8
31 „ 32	20 4 4	22 6 9
32 „ 33	19 19 2	22 1 9
33 „ 34	19 14 2	21 16 7
34 „ 35	19 9 2	21 11 5
35 „ 36	19 4 1	21 6 2
36 „ 37	18 18 11	21 0 9
37 „ 38	18 13 9	20 15 3
38 „ 39	18 8 7	20 9 7
39 „ 40	18 3 5	20 3 11
40 „ 41	17 17 10	19 18 0
41 „ 42	17 12 4	19 12 1
42 „ 43	17 6 10	19 6 11
43 „ 44	17 1 4	18 19 8
44 „ 45	16 15 8	18 13 3
45 „ 46	16 9 11	18 6 9

Age at time of Purchase.	Males. Cost of an Immediate Annuity of £1.	Females. Cost of an Immediate Annuity of £1.
	£ s. d.	£ s. d.
If 46 & under 47	16 4 2	18 0 0
47 „ 48	15 18 3	17 13 2
48 „ 49	15 12 3	17 8 1
49 „ 50	15 6 1	16 18 11
50 „ 51	14 19 11	16 11 9
51 „ 52	14 13 6	16 4 7
52 „ 53	14 7 1	15 17 1
53 „ 54	14 0 5	15 9 11
54 „ 55	13 14 8	15 2 4
55 „ 56	13 6 9	14 14 9
56 „ 57	12 19 8	14 6 11
57 „ 58	12 12 5	13 19 0
58 „ 59	12 4 11	13 11 1
59 „ 60	11 17 4	13 3 1
60 „ 61	11 9 8	12 15 1
61 „ 62	11 2 2	12 7 0
62 „ 63	10 11 11	11 19 0
63 „ 64	10 7 8	11 11 0
64 „ 65	10 0 6	11 2 11
65 „ 66	9 13 1	10 14 7
66 „ 67	9 6 1	10 6 1
67 „ 68	8 19 7	9 18 1
68 „ 69	8 12 10	9 9 10
69 „ 70	8 8 2	9 1 10
70 „ 71	7 19 5	8 14 2
71 „ 72	7 12 10	8 6 10
72 „ 73	7 6 4	7 19 10
73 „ 74	7 0 1	7 13 0
74 „ 75	6 14 1	7 6 4
75 „ 76	6 8 1	6 19 10
76 „ 77	6 2 8	6 13 7
77 „ 78	5 17 4	6 7 5
78 „ 79	5 12 3	6 1 6
79 „ 80	5 7 2	5 15 9
80 or any greater age	5 2 1	5 10 3

The above table gives the cost of an annuity of 1*l.*, and an annuity of a larger amount costs a larger sum in exact proportion.

Savings Bank annuities are payable by half-yearly instalments on the 5th January and 5th July, or the 5th April and 10th October, according to the date of purchase.

The purchase money for immediate life annuities is not returnable in any event.

APPENDIX D.

LORD CAMPBELL'S ACT.

(9 & 10 Vict. c. 93.)

An Act for compensating the Families of Persons killed by Accidents.

[26th August, 1846.

WHEREAS no action at law is now maintainable against a person who by his wrongful act, neglect, or default may have caused the death of another person, and it is oftentimes right and expedient that the wrongdoer in such case should be answerable in damages for the injury so caused by him: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony.

2. And be it enacted, that every such action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct.

3. Provided always, and be it enacted, that not more than one action shall lie for and in respect of the same subject-matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

4. And be it enacted, that in every such action the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

5. And be it enacted, that the following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject-matter; that is to say, words denoting the singular number are to be understood to apply also to a plurality of persons or things; and words denoting the masculine gender are to be understood to apply also to persons

of the feminine gender; and the word "person" shall apply to bodies politic and corporate; and the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

6. And be it enacted, that this Act shall come into operation from and immediately after the passing thereof, and that nothing therein contained shall apply to that part of the United Kingdom called Scotland.

7. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.

POLICY OF INSURANCE FOR DOMESTIC SERVANTS.

THIS AGREEMENT, made the day of 190 , between hereinafter called "the company," of the one part, and , hereinafter called "the assured," of the other part.

WHEREAS the assured is the employer at his residence [*give address*] of the domestic or menial servants set out in the schedule hereto, and has requested the company to insure him in manner hereinafter appearing, which the company have agreed to do, IT IS HEREBY AGREED

(1) The assured shall pay the company the premium of £ .

(2) If the assured shall employ at his said residence additional servants to those specified he shall pay the company an additional premium calculated on the same rates as the said premium, and on the employment of such additional servants such additional premium shall forthwith become and be a debt due and owing to the company.

(3) In consideration of such premium and additional premium, if any, the company shall indemnify the assured against all claims or liability, whether for compensation, damages or costs, which the assured may be subjected to or incur as employer of the said servants or additional servants as aforesaid, under or by virtue of—

The Workmen's Compensation Act, 1906;
The Employers' Liability Act, 1880;
His liability at common law; or
Lord Campbell's Act, 1846; or
Lord Campbell's Act Amendment Act, 1864.

(4) And it is hereby further agreed between the parties that if any claim or liability as aforesaid shall be made against or incurred by the assured, the assured shall—(a) give notice thereof in writing to the company, at their above address, as soon as he reasonably can; (b) give the company all reasonable assistance in settling or otherwise dealing with such claim or liability; and (c) do no act or thing whereby the said company shall be prejudiced in so settling or otherwise dealing with such claims or liability. But provided always that if the assured shall fail to give such notice or render such assistance, or shall otherwise prejudice the company as aforesaid, the same shall not render this agreement void, but so far as the company are damnified by such omission or act as aforesaid, so far they shall be relieved from indemnifying the assured under this agreement.

(5) This agreement shall terminate at four o'clock on the day of , 19 .

SCHEDULE.

A. Domestic or menial servants regularly employed [*give particulars*].

B. Additional servants to be specified and paid for as soon as conveniently may be.

C. All other domestic or menial servants temporarily or occasionally employed by the assured at his above-named residence, or for purposes incidental or connected therewith.

LORD CAMPBELL'S ACT AMENDMENT ACT.

(27 & 28 Vict. c. 95.)

An Act to amend the Act 9 & 10 Vict. c. 93, for compensating the Families of Persons killed by Accident. [29th July, 1864.

WHEREAS by an Act passed in the session of Parliament holden in the ninth and tenth years of her Majesty's reign, intituled An Act for Compensating the Families of Persons Killed by Accident, it is amongst other things provided, that every such action as therein mentioned shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused as therein mentioned, and shall be brought by and in the name of the executor or administrator of the person deceased: And whereas it may happen by reason of the inability or default of any person to obtain probate of the will or letters of administration of the personal estate and effects of the person deceased, or by reason of the unwillingness or neglect of the executor or administrator of the person deceased to bring such action as aforesaid, that the person or persons entitled to the benefit of the said Act may be deprived thereof; and it is expedient to amend and extend the said Act as hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. If and so often as it shall happen at any time or times hereafter in any of the cases intended and provided for by the said Act that there shall be no executor or administrator of the person deceased, or that there being such executor or administrator no such action as in the said Act mentioned shall within six calendar months after the death of such deceased person as therein mentioned have been brought by and in the name of his or her executor or administrator, then and in every such case such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been, if it had been brought by and in the name of such executor or administrator; and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

2. And whereas by the second section of the said Act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

3. This Act and the said Act shall be read together as one Act.

WORKMEN'S COMPENSATION ACT, 1897.

(60 & 61 Vict. c. 37.)

An Act to amend the Law with respect to Compensation to Workmen for accidental Injuries suffered in the course of their Employment.

[6th August, 1897.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.—(1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as herein-after mentioned, be liable to pay compensation in accordance with the First Schedule to this Act.

(2.) Provided that:—

(a) The employer shall not be liable under this Act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed;

(b) When the injury was caused by the personal negligence or wilful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this Act shall affect any civil liability of the employer, but in that case the workman may, his option, either claim compensation under this Act, or take the same proceedings as were open to him before the commencement of this Act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Act, and shall not be liable to any proceedings independently of this Act, except in case of such personal negligence or wilful act as aforesaid;

(c) If it is proved that the injury to a workman is attributable to the serious and wilful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3.) If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act (including any question as to whether the employment is one to which this Act applies), or as to the amount or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration, in accordance with the Second Schedule to this Act.

(4.) If, within the time herein-after in this Act limited for taking proceedings, an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Act.

In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.

(5.) Nothing in this Act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine, but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act.

2.—(1.) Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake or other reasonable cause.

(2.) Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3.) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4.) The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5.) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at, the office, or, if there be more than one office, any one of the offices of such body.

3.—(1.) If the Registrar of Friendly Societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favourable to the general body of workmen and their dependants than the provisions of this Act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply notwithstanding any contract to the contrary made after the commencement of this Act.

(2.) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3.) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4.) If complaint is made to the Registrar of Friendly Societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favourable to the general body of workmen of such employer and their dependants as the provisions of this Act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certifi-

cate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

5.) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the Registrar of Friendly Societies in the event of a difference of opinion.

(6.) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Registrar of Friendly Societies.

(7.) The Chief Registrar of Friendly Societies shall include in his annual report the particulars of the proceedings of the registrar under this Act.

4. Where, in an employment to which this Act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this Act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this Act or in respect of personal negligence or wilful act independently of this Act) by such contractor, or would be so payable if such contractor were an employer to whom this Act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to, and is no part of, or process in, the trade or business carried on by such undertakers respectively.

5.—(1.) Where any employer becomes liable under this Act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court, and order the same to be invested or applied in accordance with the provisions of the First Schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2.) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

6. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed, either at law against that person to recover damages, or against his employer for compensation under this Act, but not against both, and if compensation be paid under this Act, the employer shall be entitled to be indemnified by the said other person.

7.—(1.) This Act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined on in or about any building which exceeds thirty feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished or on which machinery driven by steam, water, or other mechanical power, is being used for the purpose of the construction, repair, or demolition thereof.

(2.) In this Act—

"Railway" means the railway of any railway company to which the Regulation of Railways Act, 1873, applies, and includes a light railway made under the Light Railways Act, 1896; and "railway" and "railway company" have the same meaning as in the said Acts of 1873 and 1896:

"Factory" has the same meaning as in the Factory and Workshop Acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant, to which any provision of the Factory Acts is applied by the Factory and Workshop Act, 1895, and every laundry worked by steam, water, or other mechanical power:

"Mine" means a mine to which the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, applies:

"Quarry" means a quarry under the Quarries Act, 1894:

"Engineering work" means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used:

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshop Acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the Coal Mines Regulation Act, 1887, or the Metalliferous Mines Regulation Act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition:

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer:

"Workman" includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependants, or other person to whom compensation is payable:

"Dependants" means—

(a) in England and Ireland, such members of the workman's family specified in the Fatal Accidents Act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

(b) in Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman, as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(3.) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this Act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

8.—(1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this Act would apply if the employer were a private person.

(2.) The Treasury may, by warrant laid before Parliament, modify for the purposes of this Act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that Act, or any such warrant.

may frame a scheme with a view to its being certified by the Registrar of Friendly Societies under this Act.

9. Any contract existing at the commencement of this Act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this Act.

10.—(1.) This Act shall come into operation on the first day of July one thousand eight hundred and ninety-eight.

(2.) This Act may be cited as the Workmen's Compensation Act, 1897.

SCHEDULES

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.

(1.) The amount of compensation under this Act shall be—

(a) where death results from the injury—

(i) if the workman leaves any dependants wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds, provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii) if the workman does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this Act, to be reasonable and proportionate to the injury to the said dependants; and

(iii) if he leaves no dependants, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds;

(b) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound.

(2.) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

(3.) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place.

(4.) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependants, or, if he leaves no dependants, to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act.

(5.) Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled by arbitration under this Act.

(6.) The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7.) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8.) Any sum to be so invested may be invested in the purchase of an annuity from the National Debt Commissioners through the Post Office Savings Bank, or be accepted by the Postmaster-General as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(9.) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this Act shall be paid out, except upon authority addressed to the Postmaster-General by the Treasury or by the judge of the county court.

(10.) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this Act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(11.) Any workman receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, as mentioned in the Second Schedule to this Act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12.) Any weekly payments may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this Act.

(13.) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled,

in default of agreement, by arbitration under this Act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as aforementioned.

(14.) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15.) Where a scheme certified under this Act provides for payment of compensation by a friendly society, the provisions of the proviso to the first sub-section of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(16.) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17.) In the application of this Act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that Act shall apply to money invested in the Post Office Savings Bank under this Act.

SECOND SCHEDULE.

Arbitration.

The following provisions shall apply for settling any matter which under this Act is to be settled by arbitration:—

(1.) If any committee, representative of an employer and his workmen, exists with power to settle matters under this Act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2.) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the Lord Chancellor so orders according to the like procedure, by a single arbitrator appointed by the county court judge.

(3.) Any arbitrator appointed by the county court judge shall, for the purposes of this Act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the Treasury.

(4.) The Arbitration Act, 1889, shall not apply to any arbitration under this Act; but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this Act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the Court of Appeal; and the county court judge, or the arbitrator appointed by him, shall, for the purpose of an arbitration under this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

(5.) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(6.) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the

limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7.) In the case of the death or refusal or inability to act of an arbitrator, a judge of the High Court at Chambers may, on the application of any party, appoint a new arbitrator.

(8.) Where the amount of compensation under this Act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this Act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9.) Where any matter under this Act is to be done in a county court, or by to or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by to or before the judge or registrar of, the county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10.) The duty of a county court judge under this Act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this Act authorises rules of court to be made, and also generally for carrying into effect this Act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11.) No court fee shall be payable by any party in respect of any proceeding under this Act in the county court prior to the award.

(12.) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13.) The Secretary of State may appoint legally qualified medical practitioners for the purpose of this Act, and any committee, arbitrator, or judge may, subject to regulations made by the Secretary of State and the Treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to Treasury regulations, be paid out of moneys to be provided by Parliament.

(14.) In the application of this schedule to Scotland –

(a) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court":

(b) Any award or agreement as to compensation under this Act may be competently recorded for execution in the books of council and

session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral:

(c) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorised in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the Court of Session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be pronounced.

(15.) Paragraphs four and seven of this schedule shall not apply to Scotland.

(16.) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

WORKMEN'S COMPENSATION ACT, 1900.

(63 & 64 Vict. c. 22.)

An Act to extend the benefits of the Workmen's Compensation Act, 1897, to Workmen in Agriculture. [30th July, 1900.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1.) From and after the commencement of this Act, the Workmen's Compensation Act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2.) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section four of the Workmen's Compensation Act, 1897, shall apply in respect of any workman employed in such work as if that employer were an undertaker within the meaning of that Act.

Provided that, where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, ploughing, or other agricultural work, he, and he alone, shall be liable under this Act to pay compensation to any workman employed by him on such work.

(3.) Where any workman is employed by the same employer mainly in agricultural but partly or occasionally in other work, this Act shall apply also to the employment of the workman in such other work.

The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

2. This Act may be cited as the Workmen's Compensation Act, 1900, and shall be read as one with the Workmen's Compensation Act, 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts, 1897 and 1900.

3. This Act shall come into operation on the first day of July one thousand nine hundred and one.

APPENDIX E.

MEDICAL REFEREES RULES.

REGULATIONS, DATED JUNE 24, 1907, MADE BY THE SECRETARY OF STATE AND THE TREASURY AS TO THE DUTIES AND REMUNERATION OF MEDICAL REFEREES IN ENGLAND AND WALES UNDER THE PROVISIONS OF THE FIRST AND SECOND SCHEDULES TO THE WORKMEN'S COMPENSATION ACT, 1906.

I, the Right Honourable Herbert John Gladstone, one of His Majesty's Principal Secretaries of State, and We, the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers respectively conferred on us by the Workmen's Compensation Act, 1906, hereby make the following regulations:—

Part I.—DEFINITIONS AND GENERAL REGULATION

1. In these regulations—

(i.) "Medical Referee" means a medical practitioner appointed by the Secretary of State to act as medical referee for the purposes of the Workmen's Compensation Act, 1906.

(ii.) "Reference" means—

(*a*) In regulations in Part II., the appointment of a medical referee by the registrar of a county court, to give a certificate, in accordance with the provisions of paragraph (15) of the first schedule to the Workmen's Compensation Act, 1906, as to the condition of the workman and his fitness for employment or as to whether or not and what extent the incapacity of the workman is due to the accident.

(*b*) In regulations in Part III., the appointment of a medical referee by the registrar of a county court to give a certificate, in accordance with the provisions of paragraph (18) of the first schedule to the Workmen's Compensation Act, 1906, as to whether the incapacity resulting from the injury is likely to be of a permanent nature.

(c) In regulations in Part V., the appointment of a medical referee by a committee, arbitrator or judge to report on any matter material to any question arising in an arbitration under the Workmen's Compensation Act, 1906.

(iii.) "Committee" means a committee representative of an employer and his workmen, with power to settle matters under the Workmen's Compensation Act, 1906, in the case of the employer and workmen.

(iv.) "Agreed Arbitrator" means a single arbitrator agreed on by the parties to settle any matter which under the Workmen's Compensation Act, 1906, is to be settled by arbitration.

(v.) "Appointed Arbitrator" means a single arbitrator appointed by the judge.

(vi.) "Judge" means County Court Judge.

(vii.) The words "district in which the case arises" mean the county court district in which all the parties concerned reside, or, if they reside in different districts, the district prescribed by rules of court, subject to any transfer made under those rules.

2. In the case of any reference under these regulations, the medical referee, in the absence of special circumstances, shall be one of those appointed by the Secretary of State for the county court circuit which includes the district in which the case arises, and shall, if the circuit has been sub-divided, and medical referees have been appointed for the sub-divisions, be one appointed for the sub-division which comprises the aforesaid district. Provided that, where there has been a previous reference in any case, any subsequent reference in the same case shall, if possible, be made to the same referee and be accompanied by the previous report or certificate, or copy thereof, of the medical referee.

3. The medical referee shall not accept any reference under these regulations unless signed or countersigned by the registrar of a county court and sealed with the seal of the county court.

Forms I, J, K, and L.

4. The medical referee shall send to the Home Office at the end of each quarter statements, in the forms prescribed in the schedule to these regulations, of the fees due to him for the quarter under these regulations.

5. In cases where a claim is made under the regulations in respect of travelling expenses, the medical referee, in submitting his quarterly statements under regulation 4, shall certify the distance of the place to which he was required to travel from his residence or other prescribed centre.

6. In cases involving special difficulty the medical referee may apply to the Secretary of State for special expert assistance which may be granted by the Secretary of State, if he thinks fit, on such terms as to remuneration or otherwise as he may with the sanction of the Treasury determine.

7. The registrar of every county court shall keep a record, in the form prescribed in the schedule, of all references made under these regulations, and of all cases in which a medical referee is summoned to sit as assessor, and shall send a copy thereof to the Secretary of State at the end of each quarter. Form M.

8. These regulations shall come into force on the 1st day of July, 1907, and shall apply to England and Wales.

Part II.—Regulations as to References under Schedule I., paragraph (15).

9. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to both the parties signing the application on which the reference is made. Forms A and B.

10. Before giving the certificate required by the reference, the medical referee shall personally examine the workman and shall consider any statements that may be made or submitted by either party.

11. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations. Form C.

12. The medical referee shall forward his certificate to the registrar from whom he received the reference.

13. The following shall be the scale of fees to be paid to medical referees in respect of references under this part of the regulations:—

(i.) For a first reference (to include all the duties performed in connection therewith) ..... 2 guineas.

(ii.) For a second or subsequent reference to the same medical referee in the same case ..... 1 guinea.

(iii.) Where in order to examine the injured workman the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—*5s.* for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter *1s.* for each mile distant therefrom.

Part III.—Regulations as to References under Schedule I., paragraph (18).

Form D. 14. The medical referee shall, on receipt of a reference duly signed and sealed, fix a time and place for the examination of the workman, and shall send notice accordingly to the workman.

15. Before giving the certificate required by the reference the medical referee shall make a personal examination of the workman.

Form E. 16. The certificate given by the medical referee shall be according to the form prescribed in the schedule to these regulations.

17. The medical referee shall forward his certificate to the registrar from whom he received the reference.

18. The fee to be paid to a medical referee in respect of a reference (to include all the duties performed in connection therewith) under this part of these regulations shall be one guinea.

Part IV.—Regulation as to Remuneration of Medical Referee for sitting as Assessor under Schedule II., paragraph (5).

19. Where a medical referee attends on the summons of the judge for the purpose of sitting with the judge as an assessor, as provided for in paragraph (5) of the second schedule to the Workmen's Compensation Act, 1906, he shall be entitled for such attendance (to include his services as assessor) to a fee of 3 guineas, and where in order so to attend on the judge, he is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, he shall be entitled, in addition to the above fee, to 5*s.* for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter to 1*s.* for each mile distant therefrom.

Part V.—Regulations as to References under Schedule II., paragraph (15).

Conditions of Reference.

20. Before making any reference, the committee, arbitrator, or judge shall be satisfied, after hearing all medical evidence tendered by either side, that such evidence is either conflicting or insufficient on some matter which seems material to a question arising in the arbitration, and that it is desirable to obtain a report from a medical referee on such matter.

Form and Mode of Reference.

21. Every reference shall be made in writing and shall state the matter on which the report of the medical referee is required, and the question arising in the arbitration to which such matter seems to be material. Such reference shall be in accordance with the form prescribed in the schedule to these regulations, or as near thereto as may be. **Form F.**

The reference shall be accompanied by a general statement of the medical evidence given on behalf of the parties; and if such evidence has been given before a committee or an agreed arbitrator, each medical witness shall sign the statement of his evidence, and may add any necessary explanation or correction.

22. On making the reference to the medical referee, the committee, arbitrator or judge shall make an order in the form prescribed in the schedule, directing the injured workman to submit himself for examination by the medical referee. Before making such order they shall inquire whether he is in a fit condition to travel for the purpose of examination, and if satisfied that he is in a fit condition, they shall by the same order direct him to attend at such time and place as the referee may fix. **Form G.**

It shall be the duty of the injured workman to obey any such order.

If the committee, arbitrator or judge is satisfied that the workman is not in a fit condition to travel, they shall so state in the reference.

23. The reference shall be signed, if made by a committee, by the chairman and secretary of the committee; if made by an agreed arbitrator, by the arbitrator; if made by a judge or an appointed arbitrator, by the judge or arbitrator, or by the registrar of the County Court in which the arbitration is pending.

24. A committee or an agreed arbitrator, making a reference, shall, without naming a medical referee, address the reference in general terms to "one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906," and shall forward it to the registrar of the County Court of the district in which the case arises.

Duties of Registrar.

25.—(1) In the case of a reference by a committee or agreed arbitrator, the registrar on receiving the reference—

(a) Shall see that the reference is in accordance with these regulations, and if it is not, shall return it for amendment:

(b) Shall insert the name of the medical referee proper to be appointed;

(c) Shall, when the reference is in accordance with these regulations, countersign and seal it, and forward it forthwith to the medical referee.

(2) In the case of a reference by a judge or an appointed arbitrator, the registrar of the Court in which the arbitration is pending shall sign (or countersign) and seal it, and forward it forthwith to the medical referee.

26. The registrar, on receiving a report from a medical referee under Regulation 28, shall forthwith file a copy at the Court and transmit the report to the committee, arbitrator or judge by whom the reference was made.

If the committee, arbitrator or judge shall direct that the parties be at liberty to inspect the report, the registrar shall on receiving notice of such direction permit such inspection to be made during office hours, and shall on the application and at the cost of any party furnish him with a copy of the report or allow him to take a copy thereof.

Report of Medical Referee.

Form H.

27. The medical referee shall, on receipt of a reference duly signed and sealed, appoint a time and a place for the examination of the workman, and shall send him notice accordingly.

28. The medical referee shall give his report in writing, and shall forward it to the registrar from whom he received the reference.

29. The committee, arbitrator or judge may, by request signed and forwarded in the same manner as the reference, remit the report to the medical referee for a further statement on any matter not covered by the original reference.

Fees.

30. The following shall be the scale of fees to be paid to the medical referees in respect of references under this part of the regulations:—

(i.) For a first reference, to include examination of the injured workman and written report	2 guineas.
(ii.) For a further statement under Regulation 29 on any matter not covered by the original reference	1 guinea.
(iii.) For a second or subsequent reference to the same referee in a further arbitration on the same case, to include examination, if necessary, and written report	1 guinea.

(iv.) Where in order to examine the injured workmen the medical referee is compelled to travel to a place distant more than two miles from his residence or such other centre as may be prescribed by the Secretary of State, in addition to the above fees—5*s.* for each mile beyond two, and up to ten, miles distant from such residence or centre, and thereafter 1*s.* for each mile distant therefrom.

H. J. Gladstone,
One of His Majesty's Principal
Secretaries of State.

Joseph A. Pease,
J. H. Whitley,
Two of the Lords Commissioners of
His Majesty's Treasury.

24th June, 1907.

SCHEDULE.

(FORM A.)

Notice by Medical Referee to Employer or Solicitor signing the application on Employer's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me by the Registrar of the County Court of holden at , under Schedule I., paragraph (15), of the above-named Act, in the case of (*name and address of workman*) I propose to examine the said at on the day of at o'clock.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the employer), will be considered.

Dated this day of

(Signed)

Medical Referee.

(FORM B.)

Notice by Medical Referee to Workman or Solicitor signing the application on Workman's behalf (Schedule I. (15)).

Workmen's Compensation Act, 1906.

To

I hereby give you notice that in accordance with the Reference made to me in your case (*or, if notice is addressed to the solicitor*), in the case of (*name and address of workman*), by the Registrar of the County Court of holden at , under Schedule I., paragraph 15), of the above-named Act, I propose to examine you (*or* the said) at on the day of at o'clock.

And you are required to submit yourself (*or* the said is required to submit himself) for examination accordingly.

Any statements made or submitted by you (*or, if notice is addressed to the solicitor*, by the workman) will be considered.

Dated this day of

(Signed)

Medical Referee.

(FORM C.)

Certificate of Medical Referee as to condition of Workman and fitness for employment, or as to whether or to what extent incapacity of Workman is due to the accident (*Schedule I.* (15)).

Workmen's Compensation Act, 1906.

In accordance with the Reference made to me by the Registrar of the County Court of holden upon the application of (*names and addresses of parties*) I have on the day of examined the said (*name of workman*) and I hereby certify as follows:—

1. The said is*

and his condition is such that he is †

2. The incapacity of the said is ‡

NOTE.—*Either paragraph* 1 *or paragraph* 2 *to be filled up, or both to be filled up, according to the terms of the Reference.*

Dated this day of .

(Signed)

Medical Referee.

* Describe state of health.

† State whether workman is fit for his ordinary or other work, specifying where necessary the kind of work, or whether he is unfit for work of any kind.

‡ State whether or to what extent the incapacity is due to the accident (*or, in cases coming within section* 8 *of the Act*, to the disease).

(FORM D.)

Notice by Medical Referee to Workman (*Schedule I.* (18)).

Workmen's Compensation Act, 1906.

To .

I hereby give you notice that in accordance with the Reference made to me in your case by the Registrar of the County Court of holden at under Schedule I., paragraph (18), of the above-named Act, I propose to examine you at on the day of at o'clock, and you are required to submit yourself for examination accordingly.

Dated this day of .

(Signed)

Medical Referee.

(FORM E.)

Certificate of Medical Referee (Schedule I. 18).

Workman's Compensation Act, 1906.

In accordance with the Reference made to me by the Registrar of the County Court of holden at under Schedule I., paragraph (18), of the above-named Act, I have on the day of examined of *(name and address of workman)* and I hereby certify that his incapacity is [*or* is not] likely to be of a permanent nature.

Dated this day of .

(Signed)
Medical Referee.

(FORM F.)

Reference to a Medical Referee (Schedule II. 15).

In the matter of the Workmen's Compensation Act, 1906,
and
In the matter of an Arbitration between
A.B.
Address
Description Applicant,
and
C.D.
Address
Description Respondent.

As the case may be
- (*a*) We, a committee representative of and his workmen, and empowered to arbitrate in the matter arising under the Workmen's Compensation Act, between A.B. and C.D.;
- (*b*) I, , an arbitrator agreed upon by A.B. and C.D. to arbitrate in the matter arising between them under the Workmen's Compensation Act, 1906;
- (*c*) I, , Judge of County Courts;
- (*d*) I, , arbitrator appointed by , a Judge of County Courts,

having heard the evidence tendered by both parties, hereby certify that in our (*or* my) opinion the medical evidence given before us (*or* me) is conflicting (*or* insufficient) on a matter which seems to us (*or* me) to be material to a question arising in the above-mentioned arbitration, and that

it is desirable to obtain a report from a medical referee on such matter, as follows:—

(A) On the day of personal injury was (*or* is alleged to have been) caused to* by accident arising out of and in the course of his employment, under the following circumstances:—

†

Or, in a case of industrial disease to which the Act applies—

(A) On the day of the said* was, under section 8 of the above-named Act, certified to be disabled by, or suspended from his usual employment on account of his having contracted, a disease to which the said section applies, namely,‡

(B) The matter on which we are (*or* I am) satisfied that it is desirable to obtain a report is—

(C) Such matter seems to be material to the following question arising in the arbitration, viz.:—

We (*or* I) therefore appoint§ one of the medical referees appointed by the Secretary of State for the purposes of the Workmen's Compensation Act, 1906, to examine the said (*or* me) on the matter specified above, and to report to us.

A statement of the medical evidence given before us (*or* me) is appended.

We are (*or* I am) satisfied that the said who is now at , is in a fit condition to travel for the purpose of being examined, and he has been directed to attend on the referee for examination at such time and place as shall be fixed by the referee; *or* does not appear to be in a fit condition to travel for the purpose of being examined.

The referee is requested to forward his report to—

The Registrar,
County Court Office,

on or before the day of

Dated this day of

(Signed)

¶

or On behalf of the Committee

Chairman } *of Committee.*
Secretary }

Signature of Registrar and Seal of Court.

A previous reference was made to a medical referee in this case on the . 19 , and a copy of the report then given is attached.

* Insert name of injured workman.

† Here state the facts of the accident as ascertained from the evidence.

‡ Name disease.

§ The name must, if the reference is made by a committee or agreed arbitrator, be left in blank to be inserted by the Registrar.

¶ For signature of judge or arbitrator.

(Form G.)

Order on injured Workman to submit himself for examination by Medical Referee.

(*Title as in Reference.*)

To *Address.*
Description.
of

Take Notice—

That the committee (*or* arbitrator, *or* judge) have (*or* has) appointed one of the medical referees under the Workmen's Compensation Act, 1906, to examine you for the purposes of the above-mentioned arbitration, and to report to them (*or* him).

You are hereby required to submit yourself for examination by such referee,* and to attend for that purpose at such time and place as may be fixed by him.

Dated this day of .

(*To be signed in the same manner as Reference.*)

* Strike out from "and to attend" when injured workman does not appear to be in a fit condition to travel.

(Form H.)

Notice by Medical Referee to injured Workman (Schedule II. (15)).

Workmen's Compensation Act, 1906.

To .

I hereby give you notice that I have been appointed to examine and report on your case under Schedule II., paragraph (15), of the above-named Act, and that I propose to make such examination at on the day of at o'clock.

(Signed)

Medical Referee.

(FORM I.)

Medical Referee's Statement of Fees in respect of References under Schedule I. (15).

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and Place of Examination.	Date on which Certificate sent to Registrar.	Whether Certificate as to condition of workman or as to cause of incapacity or both.	Amount of the fees under each of the headings in Regulation 13. (i.)	(ii.)	(iii.)	Payments under Regulation 6.
							£ s. d.	£ s. d.	£ s. d.	£ s. d.
						£				
							Total ...	£	s.	d.

Endorsement to be made on back of statement.

I hereby certify that I examined the above-mentioned (*name of workman*) on at which is distant miles from my residence or prescribed centre.

(Signed)

(FORM J.)

Medical Referee's Statement of Fees in respect of References under Schedule I. (18).

Number.	Name of Workman.	Date on which Reference received.	Registrar from whom received.	Date of examination.	Date on which Certificate sent to Registrar.	Whether incapacity certified to be permanent, or not.	Fees under Regulation 18.	Payments under Regulation 6.
							£ s. d.	£ s. d.
							Total ...	£	s.	d.

(FORM K.)

Medical Referee's Statement of Fees for Attendances as Assessor under Schedule II. (5).

Number.	Date on which Summons received.	Registrar from whom Summons received.	Date and Place of Attendance.	Fees under Regulation 19. For attendance.	Fees under Regulation 19. For miles travelled.
				£ s. d.	£ s. d.

(FORM L.)

Medical Referee's Statement of Fees in respect of References under Schedule II. (15).

Number.	Names of Parties.	Date on which Reference received.	Registrar from whom received.	Date and place of Examination.	Date on which Report sent.	Amount of Fees under each of the headings in Regulation 30. (i.)	(ii.)	(iii.)	(iv.)	Payments under Regulation 6.
						£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
					£					
								Total ...	£	s. d.

* I hereby certify that I examined the above-mentioned (*name of workman*) on , at , which is distant miles from my residence or prescribed centre.

. (Signed)

* Endorsement to be made on back of statement.

(FORM M.)

Record of References, &c., to be kept by Registrar.

County Court Circuit . District . Name of Registrar .

For quarter ended .

Number of Reference.	Names of Parties.	Workman's Employment.	Date on which Reference forwarded to Medical Referee.	Provision in the Act under which Reference is made, and if under Sched. II. 15, by whom made.*	Whether workman directed to attend on Medical Referee, or not.	Medical Referee appointed.	Date and number of previous Reference in same case, if any.
(1.)	(2.)	(3.)	(4.)	(5.)	(6.)	(7.)	(8.)

* Here say whether committee, agreed arbitrator, county court judge, or appointed arbitrator.

NOTE.—In cases where there is no Reference, but the Medical Referee is summoned to sit as assessor, the Registrar should write a note to that effect across columns 4, 5, and 6.

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