THE WORKMEN'S COMPENSATION ACT

FOR

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THE WORKMEN'S COMPENSATION ACT OF QUEBEC.

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Workmen's Compensation Act

OF

Quebec

ANNOTATED BY

T. P. FORAN, K. C.

(District of Ottawa).

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PREFACE

THIS book is intended to explain the Act respecting the responsibility for accidents suffered by workmen in the course of their work, and the compensation for injuries resulting therefrom, a title which the compiler has, for the sake of brevity, changed to "The Workmen's Compensation Act of Quebec."

The justice of the law or its adequacy to attain its object, is not considered here. There is, doubtless, some truth in the proposition that injuries and deaths which occur in the course of work, are among the cost of production, and should be reckoned in and paid out of the profits of the industry, and that the loss should be shared between the injured workman and his employer, on the theory that the dangerous employment is equally profitable to both; although it has not been suggested by any politician that a fund should be created out of the earnings of the employee and employer alike to provide a pension for the latter when, through hard times, over-production, or other accidents to trade, he has been reduced to a state of innocent bankruptcy.

Twenty-three countries have enacted employees' compensation laws; Austria, Belgium, British Columbia, Cape of Good Hope, Denmark, Finland, France, Germany, Great Britain, Greece, Hungary, Italy, Luxemburg, Netherlands, New Zealand, Norway, Quebec, Queensland, Russia, South Australia, Spain, Sweeden and Western Australia. The whole burthen rests upon the employer in all countries except Austria, Germany, Hungary and Russia, where the employees bear a part of the expense.

In our Province, the original Bill on which the present Act

is found, was introduced in 1904, and the French Law of April 9th, 1898, has been bent and clipped to suit the purposes of our lawgivers.

It has been said by an eminent writer that "When a French *loi* is chopped up and amended by the legislature of Quebec, as was done lately in the case of the Workmen's Compensation Act of 1909, its own father would not know it." This is a truth too palpable to be gainsaid.

Nevertheless, the law has to be interpreted and dealt with as it is, and it is hoped that cross-references, and a digest of the decisions rendered under the parent laws and placed under appropriate articles, will assist the layman and the practitioner in the understanding of ours.

The French Law of 1898 as amended, and the Imperial Act of 1906, are given in an Appendix, together with a Table and Rule for computing the period during which any given capital sum will continue to yield a certain annual rent at various rates of compound interest. A second Table will allow the reader to see at a glance the duration of an annual rent of from $100 to $400, (the latter being the limit fixed by article 6) to be derived from a capital sum of $500 to $2000, at the rate of 3½ per cent., the basis used by insurance companies generally.

It has been sought to make the Index ample and useful.

THOS. P. FORAN.

Hull, May 1st, 1910.

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ABBREVIATIONS

A. C.	Appeal Cases, Law Reports.
Bacon	Friendly Societies and Life Insurance.
B.-L. & W.	Baudry-Lacantinerie & Wahl, du Louage.
C. A.	Court of Appeal.
Civ. c.	Arrêt de la chambre civile de la cour de cassation qui casse.
Civ. r.	Arrêt de la chambre civile de la cour de cassation qui rejette.
D. P.	Recueil Périodique de Dalloz.
El. & B.	Ellis & Blackstone Reports.
F.	Court of Sessions Cases.
Fuz. H.	Répertoire de Fuzier-Herman.
H. L.	House of Lords.
Ir.	Irish.
J. P.	Justice of the Peace Reports.
K. B.	King's Bench.
L. C. R.	Lower Canada Reports.
L. J.	Law Journal.
L. T. R.	Law Times Reports.
Mon. Jud. Lyon	Moniteur judiciaire de Lyon.
P. C.	Privy Council.
Req.	Arrêt de la chambre des requêtes de la cour de cassation.
R. S. Q.	Revised Statutes of Quebec, 1909.
S.	Sirey.
S. C.	Court of Judiciary Cases.
Sc.	Scotch.
S. C. R.	Supreme Court Reports.
S. J.	Solicitors' Journal.
S. et P.	Sirey et Journal du Palais, (from 1892).
T. L. R.	Times Law Reports, New Series.
W. R.	Weekly Reporter.

INDEX TO CASES

(The reference is to the numbered paragraphs).

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The Law respecting the responsibility for accidents suffered by workmen in the course of their work, and the compensation for injuries resulting therefrom.

9 EDWARD VII, Cap. 66.

(*Sanctioned the 20th May*, 1909.)

SECTION I.

COMPENSATION.

1. Accidents happening by reason of or in the course of their work, to workmen, apprentices and employees engaged in the work of building; or in factories, manufactories or workshops; or in stone, wood or coal yards; or in any transportation business by land or by water; or in loading or unloading; or in any gas or electrical business; or in business having for its object the building, repairing, or maintenance of railways or tramways, water-works, drains, sewers, dams, wharves, elevators, or bridges; or in mines, or quarries; or in any industrial enterprise, in which explosives are manufactured or prepared, or in which machinery is used, moved by power other than that of men or of animals, shall entitle the person injured or his representatives to compensation ascertained in accordance with the following provisions.

This act shall not apply to agricultural industries nor to navigation by means of sails.

SECTION I.

DES INDEMNITÉS.

1. Les accidents survenus par le fait du travail, ou à l'occasion du travail, aux ouvriers, apprentis et employés occupés dans l'industrie du bâtiment, dans les usines, manufactures et ateliers, et dans les chantiers de pierre, de bois ou de charbon; dans les entreprises de transport par terre ou par eau, de chargement ou de déchargement, dans celles de gaz ou d'électricité, de construction, de réparation ou d'entretien de chemins de fer ou tramways, d'aquedues, d'égouts, de canaux, de digues, de quais, de docks, d'élévateurs et de ponts; dans les mines, minières, carrières, et, en outre, dans toute exploitation industrielle, dans laquelle sont fabriquées ou mises en œuvre des matières explosives, ou dans laquelle il est fait usage d'une machine mue par une force autre que celle de l'homme ou des animaux, donnent droit, au profit de la victime ou de ses représentants, à une indemnité réglée conformément aux dispositions ci-après.

La présente loi ne s'applique pas à l'industrie agricole ni à la navigation à voile.

1. This section corresponds closely with art. 1 of the French Law of 1898, April 9th, intituled "Loi concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail."

2. "Apprentices" and "workshops" are specially mentioned in our statute, as are also "stone, wood or coal yards", and "gas or electrical business", but are not referred to in the French Act. Navigation by means of sails is expressly taken away from the applicability of the statute.

3. The English version of our statute might, with advantage, have followed the wording of the corresponding Imperial Act, and thereby given a more literal translation of the original; "happening by reason of or in the course of their work", is inferior to "arising out of or in the course of the employment". (See 2 B-L. & W. 1836 ; Holness v. Mackay, (1899), 2 Q. B. 319). "Docks" are omitted from the enumeration; "mises en œuvre" does not mean "prepared", but "used as an ingredient", "made use of". "Determined" would render the meaning of "réglée" much better than "ascertained".

4. By an amendment adopted the 12th April, 1906, the French Act is made to apply to all commercial factories.

ACCIDENT.

5. The official circular issued by the French Government in connection with the French Act, defines an accident as a bodily injury arising from the sudden action of an external cause. Cir. Mnis., 10 juin, 1899.

6. An accident is the unfortunate result arising out of

the sudden action of a violent, fortuitous and external cause. 1 Sachet, No. 256.

7. In England, it has been held that an accident must be something fortuitous and unexpected. Hamlyn v. Crown Acc. Ins. Co. (1893), 1 Q. B. 750; Hensey v. White, 69 L. J. Q. B. 188, (1890), 1 Q. B. 481; 81 L. T. 767; 48 W. R. 257; 63 J. P. 804.—C. A.

See 2 B-L. & W. No. 1835.

8. Under our statute, an accident may be said to consist of a bodily injury unintentionally brought about, by the unexpected and fortuitous action of an external cause, to a workman, apprentice or employee whose yearly wages do not exceed $1,000, and which arose out of or in the course of his employment, with others, in or about one of the establishments referred to in section 1 of the Act, and which destroys his ability to work during more than seven days.

9. Illness or infirmity caused by the unhealthy nature of the employment, does not come within the meaning of the Act. In other words, what are known as industrial diseases, due to the nature of the employment, which act slowly and gradually upon the system, and are neither sudden nor unexpected, do not fall within the purview of the statute. 1 Sachet, No. 267; Loubat, No. 540.

10. The applicant, a caulker in the employment of shipbuilders, was seized with paralysis caused by lead poisoning, and became totally incapacitated for work. In the course of his work, in which he had been employed by the shipbuilders for a period of two years before he became incapacitated, he had to smear either with red or white lead certain places between the plates of ships into which water-tight shoes were

put. The poisoning was such as might be expected from the nature of the work. It might be caused either by inhalation, or by eating food without having removed the lead from the hands, or by absorption through the skin. Only a small proportion of cases of poisoning of this description occurred amongst a number of persons working with red or white lead. The poisoning could not be traced to any particular day, and its development was a gradual process, and generally took a considerable time:—*Held*, that the lead poisoning could not be described as an "accident" in the popular and ordinary use of that word so as to entitle the applicant to compensation for personal injury by accident arising out of and in the course of his employment within the meaning of section 1 of the Workmen's Compensation Act, 1897. Fenton v. Thorley & Co. (72 L. J. K. B. 787; (1903), A. C. 433) and Brintons, Lim. v. Turvey (74 L. J. K. B. 474), considered. Steel v. Cammell, Laird & Co., 74 L. J. K. B. 610; [1905] 2 K. B. 232; 53 W. R. 612; 21 T. L. R., 490.—C. A.

See also D. P. 1901, 4, 83; Loubat, No. 542; 1 Sachet, No. 269; 2 B-L. & W. 1835.

11. A workman, employed as a painter, in September, 1907, shewed signs of "plumbism," and was removed to hospital on the 25th of that month, but all traces of the disease had before that date disappeared. He died on October 2, 1907. His dependants claimed compensation under The Workmen's Compensation Act, 1906. The County Court Judge found that the immediate cause of death was granular kidney; that that disease was a *sequela* of lead poisoning, as also of gout, alcoholism, and other complaints; and that lead poisoning was not proved to have been the cause of death; but that, on the other hand, the employers did not prove that it was not the cause of death; and he awarded compensation:—*Held* (reversing the decision of the County Court Judge),

that in order to bring the case within the operation of the Act, it must be established that lead poisoning was either the proximate or ultimate cause of death; that it was not sufficient that death was caused by something which might in some cases be a *sequela* of lead poisoning, but might also be a *sequela* of gout or alcoholism; that it must be proved that death was at least a remote consequence in the case of the particular individual. Haylett v. Vigor, 77 L. J. K. B. 1132; [1908] 2 K. B. 837; 99 L. T. 674; 24 T. L. R. 885—C. A.

12. The mercurial palsy common among mirror makers, the phthisis common among quarrymen, the necrosis of match makers, the pulmonary diseases induced by the constant inhalation of quicklime or the dust of phosphoric slag, do not constitute accidents. Loubat, No. 542; 1 Sachet, No. 270; 2 B-L. & W. 1835.

13. The death of a workman from sunstroke cannot be considered as due to an accident unless it be shown that he was exposed to greater danger and subjected to heavier toil than were those with whom he worked and who were not struck down, and that his employer had failed to adopt those precautionary measures which custom and prudence would dictate. Req. 8 juin, 1904, D. P. 1906, 1, 107.

14. The death from sunstroke of one of a gang of men washing railway cars at a station is not a death due to accident. Trib. civ., Bordeaux, 3 déc. 1900, D. P. 1901, 2, 339.

15. Nor death from the same cause happening to a man employed with others in weeding the railway tracks. Trib. civ., Châtellerault, 31 déc. 1900, D. P. 1901, 2, 339.

16. Nor the death of a cabdriver while on the seat of his

carriage, especially if it is proved that the place where he sat was protected from the rays of the sun. Req. 15 juin, 1903, D. P. 1904, 1, 262.

17. Nor the death of one occupied in breaking up old boats. Trib. civ., Bayonne, 20 mars, 1900, D. P. 1901, 2, 339.

18. Nor the death of a man which may be imputed to his lack of normal powers of resistance. Trib. civ., Troyes, 12 déc., 1900; Trib. civ. de Châtellerault, 31 déc., 1900; Trib. civ., Lyon, 3 mai, 1901; D. P. 1901, 2, 339.

19. The applicant, an ordinary seaman, while engaged in painting a vessel when she was lying at a port on the coast of Mexico, was incapacitated by sunstroke:—*Held*, that his injury arose by accident within the meaning of the Workmen's Compensation Act, 1906, and that he was entitled to compensation. Morgan v. "Zenaida" Steamship, 25 T. L. R., 446. — C. A.

20. As a rule, sunstroke being a risk to which all men are exposed, cannot be held to be an accident arising out of the employment. Toulouse, 11 juin 1903, D. P. 1904, 2 172; Req. 15 juin 1903, D. P. 1904, 1, 262; Civ. r. 2 mars 1904, D. P. 1904, 1, 553; Trib. civ. de Bayonne, 20 mars 1900, D. P. 1901, 2, 339; Trib. civ. de Rennes, 23 mars 1900, D. P. *ibid.;* Trib. civ. de Wassy, 22 nov. 1900, D. P. *ibid.;* Trib. civ. de Bordeaux, 3 déc. 1900, D. P. *ibid.;* Trib. civ. de Troyes, 12 déc. 1900, D. P. *ibid.;* Trib. civ. de Châtellerault, 31 déc. 1900, D. P. *ibid.;* Trib. civ. de Lyon, 3 mai 1901, D. P. *ibid.;* Civ. r. 10 déc. 1902, D. P. 1903, 1, 331; 2 B-L. & W. 1838.

21. But where the conditions of the employment aggravate the danger from sunstroke, the Act may be made to apply.

For instance, where the workman building a straw stack is exposed to the full force of the sun without shelter of any kind, or where a carter is driving a heavily laden waggon along an exposed highway in extremely hot weather. Civ. r., 2 March, 1904, (1st Arrêt), D. P. 1904, 1, 553; Angers, 5 May, 1900, D. P. 1901, 2, 339; Trib. civ. de Versailles, 30 Jan. 1900, D. P. 1901, 2, 339; Trib. civ. Lyon, 26 déc. 1907, D. P. 1909, 2, 129.

See note by Loubat.

22. This would be the case, in any event, if the mediate cause of death is sunstroke, and the immediate cause is the fracture of the temporal bone caused by a fall due to sunstroke. Angers, May 5, 1900, above cited.

23. It was held in Sinclair vs. Mar. Pass. Ins. Co., 30 L. J. Q. B. 77, 3 El. & Bl. 478, that sunstroke was a disease.

24. Navigation companies are not responsible for accidents arising from storms and other perils of the sea. Aix, 2 Aug., 1900; S. 1901, 2, 215.

25. The death by drowning of a workman who was occupied in a boat taking sand out of a river, and which was caught in a sudden storm and wrecked, is not due to accident. Toulouse, 11 June, 1903, D. P. 1904, 2, 172.

26. A workman who was employed upon a building which was being constructed by his employers by means of a scaffolding, was struck by lightning and killed when he was working on the scaffold about twenty-three feet above the level of the ground. The County Court Judge held, having heard evidence upon the point, that the workman was under the circumstances exposed to a substantial and abnormally increased risk owing

to the position in which he had to work, and awarded compensation to his widow under The Workmen's Compensation Act, 1897:—*Held,* that there was evidence to justify the County Court Judge in coming to the conclusion that the workman was killed by an accident arising out of, as well as in the course of, his employment. Andrew v. Failsworth Industrial Society, 73 L. J. K. B. 510; [1904] 2 K. B. 32; 90 L. T. 611; 52 W. R. 451; 68 J. P. 409.—C. A.

But see Craske *vs* Wigan, 78 L.J., K.B. 994, *post.; contra*:—Trib. civ. de Bourg, 30 janv., 1900, D. P. 1901, 2, 339; Trib. civ. de Bayonne, 20 mars 1900, D. P. *ibid.*; Trib. civ. de Bordeaux, 3 déc. 1900, D. P. *ibid.*

27. The respondent's husband, while at work in a ship's stokehole raking out ashes from a furnace, fell in a faint, the result of heatstroke, was carried to hospital, and died shortly afterwards:—*Held,* (Lord MacNaughten dissenting), that the death arose from "accident arising out of and in the course of the employment". Ismay v. Williamson, 77 L. J., P. C. 107; [1908] A. C. 437; 99 L. T. 595; 24 T. L. R. 881.—H. L. (Ir.).

28. One coal miner was incapacitated for work by "beat hand" and another by "beat knee". "Beat hand" is an injury caused by an abscess gradually produced by the jar, friction, or pressure to the hand caused by using the pick; and "beat knee" is an injury caused by an abscess in the knee gradually developed by long-continued kneeling whilst at work. Both are common injuries in the ordinary course of work in a coal mine:—*Held,* that the injuries were not caused by "accident" within the meaning of The Workmen's Compensation Act, 1897. Marshell *vs* East Holywell Coal Co., 93 L. T. 360; 21 T. L. R. 494.—C. A.

29. The formation of callosities on a workman's hands from the constant handling of the tools used in the ordinary

course of his employment does not constitute an accident within the meaning of the Act; but it is otherwise when these callosities give rise, in the course of the employment, to a suppurating tumor caused by a sudden blow or an excoriation. Trib. civ. de Lyon, 13 fév. 1908, D. P. 1908, 5, 47 .

30. A workman employed in a sewer who has contracted enteritis from inhaling poisonous sewer gas has not suffered an "injury by accident arising out of and in the course of his employment", within the meaning of the Workmen's Compensation Act, 1906, so as to entitle him to compensation under that Act. Steel v. Cammell, Laird & Co. (74 L. J. K. B. 610; (1905) 2 K. B. 232) followed. Broderick v. London County Council, 77 L. J. K. B. 1127; (1908) 2 K. B. 807; 99 L. T. 569; 24 T. L. R. 822.—C. A.

31. A miner was employed in hewing coal, and while so employed a piece of coal worked itself into his knee, with the result that blood poisoning set in and the workman died:—*Held*, that his death was the result of an "injury by accident" within The Workmen's Compensation Act, 1897. Thompson *vs* Ashington Coal Co., 84 L. T., 412; 65 J. P., 856.—C. A.

32. A workman was employed on a wharf and was engaged in the discharge of coal from the hold of a ship. His duty was to stand on a staging close to the open hold, direct the course up and down of a bucket in which the coal was being discharged, and give the necessary signals to the crane-man. While so engaged he was suddenly seized with an epileptic fit, and the result was that he fell into the hold and was seriously injured. It appeared that on previous occasions he had been subjects to fits:—*Held*, that the workman's injuries were caused by an accident "arising out of and in the course of his employment," and that he was entitled to compensation.

Wilkes *vs* Dowell & Co., 74 L. J. K. B., 572; (1905) 2 K. B., 225; 92 L. T. 677; 53 W. R. 515.—C. A.
2 B-L. & W. 1839.

33. As to erisipelas, see Accident Ins. Co. & Young, 20 S. C. R. 280.

34. On February 28, 1902, a workman who was then affected with nephritis, a disease which was likely to prove fatal to him, though probably not for a few years, received an injury in the course of his employment which so lowered his system that the disease from which he was suffering was accelerated in its operation, and he died on May 8, 1902:—*Held*, that the workman's death resulted from the injury. Golder *vs* Caledonian Railway, 5 F. 123.—Ct. of Sess.

35. The death of a workman from tuberculosis does not give rise to a claim under the Act, although the accident which happened to him hastened the fatal ending of the disease by diminishing his strength and keeping him in bed, if it be found by the court that the tuberculosis was not a result of the accident. Civ. r. 27 July, 1905, D. P. 1907, 1, 295.

36. A workman cannot claim an indemnity under the Act because of a curvature of the spine produced during his work, unless he shews that he strained himself at the time of the accident, especially if it appears from the medical examination that he had Pott's disease, an organic complaint, to which the curbature was ascribed. Req. 19 Feb. 1908, D. P. 1908, 1, 241.

37. The applicant, while employed in the respondent's colliery, was injured by a stone falling on his knee. It was a cold day on which the accident occurred, and the applicant

took over two hours to get to his home, a distance of a mile and a-quarter. Chest trouble and pneumonia supervened, and in an application for compensation under the Workmen's Compensation Act, 1906, medical evidence was given that the applicant suffered from bronchitis and chronic asthma and was unable to work. The County Court Judge found that the applicant's condition was not the natural result of the accident, and that the respondents were no longer liable to pay full compensation. The applicant appealed:—*Held,* that the County Court Judge had misdirected himself, and that the test was not whether the applicant's condition was a natural result of the accident, but whether it was a result of the accident in the sense that it was occasioned by the applicant's debilitated condition immediately after the accident; and that the case must be referred back to the County Court Judge with this direction.

Ystradowen Colliery Co. *vs* Griffiths, (1909) 2 K. B. 533; 100 L. T. 869; 25 T. L. R. 622.—C. A.

38. A workman in normal health was engaged in the course of his duty in removing a beam from a loom. He was in the act of lifting the beam on to his shoulder, when, finding it was not evenly balanced, he gave it an extra lift, or hitch up, and in doing so ruptured several fibres of the muscles of his back, which incapacitated him for work:—*Held,* that he had sustained personal injury by "accident" within the meaning of The Workmen's Compensation Act, 1897. Boardman *vs* Scott, 71 L. J. K. B. 3; (1902) 1 K. B. 43; 85 L. T. 502; 50 W. R. 184; 66 J. P. 260.—C. A.

39. Internal injury to a girl while lifting the balance weight of the machine upon which she was working, followed by death after two months treatment, constitutes an accident. Lyon, 7 June, 1900, D. P. 1901, 2, 12.

40. Injury by over-strain or over-exertion sustained by a man in doing his work is injury by "accident" within the meaning of the Workmen's Compensation Act, 1897. Stewart *vs* Wilsons and Clyde Coal Co., Lim. (5 Fraser 120) approved. Hensey *vs* White (69 L. J. Q. B. 188; (1900) 1 Q. B. 481), Lloyd *vs* Sugg & Co. (69 L. J. Q. B. 190; (1900) 1 Q. B. 481), Walker *vs* Lilleshall Coal Co. (69 L. J. Q. B. 192; (1900) 1 Q. B. 481), and Roper *vs* Greenwood (83 L. T. 471) disapproved. Fenton *vs* Thorley, 72 L. J. K. B. 787; (1903) A. C. 443; 89 L. T. 314; 52 W. R. 81.—H. L. (E).

41. A workman while engaged in the course of his employment in replacing a derailed coal hutch on the rails, severely strained his back:—*Held,* that he had been injured by an "accident" within the meaning of the Act. Stewart *vs* Wilsons and Clyde Coal Co., 5 F. 120.—Ct. of Sess.

42. A workman, while engaged in the course of his employment, in moving a weight, had an attack of cerebral haemorrhage as the result of the exertion he was using. The work was being performed in the usual manner. The workman was put to bed, and four days later a second attack supervened, which caused permanent paralysis. At the time of the first attack his arteries were in a degenerate condition, which rendered such an attack more likely to recur:—*Held,* that the workman's final disablement had been caused by accident arising out of and in the course of his employment. McInnes *vs* Dunsmuir & Jackson (1908) S. C. 1020.—Ct. of Sess.

43. A miner while engaged in holding back a hutch which was being wheeled down a gradient felt a severe pain in his chest and sat down, saying that he thought he had jerked himself. He worked on four out of the following eleven days, but became then totally incapacitated. For a period prior to

the date on which he felt the pain he had been engaged wheeling hutches, and the cause of his incapacity was cardiac breakdown due to the fact that the work in which he had for some days been engaged was too heavy for him. He was not injured by any sudden jerk, but the repeated excessive exertion strained his heart unduly until finally it was overstrained. The arbitrator, with the assistance of the medical referee as assessor, held that the injury was not "injury by accident" within the meaning of the Workmen's Compensation Act, 1906:—*Held*, on appeal, that there was no ground for altering the arbitrator's decision. Coe *vs* Fife Coal Co., (1909) S. C., 393.—Ct. of Sess.

44. A workman was employed by the defendants in the work of lifting and removing planks from a stack of timber. One night there was rain and frost, and the planks became frozen together, the planks lower in the stack being more firmly frozen together than those above; on the next day the workman began the work in the morning, and lifted and removed planks all day; about 4 P.M. while trying to lift a plank, he ruptured himself. The workman claimed compensation under the Workmen's Compensation Act, 1897, and the County Court Judge found that the injury was caused by the lifting of the plank, and was an injury by "accident" within the meaning of the Act:—*Held* (dismissing the appeal), that there was evidence of something fortuitous and unexpected upon which the County Court Judge might properly find that the injury was caused by "accident" within the meaning of the Act. Timmins *vs* Leeds Forge Co., 83 L. T. 120.—C. A.

45. Congenital hernia, arising from a defect traced to birth, and hernia due to morbid degeneracy, are held to be diseases, not accidents. 1 Sachet, No. 279.

46. But a hernia resulting from a blow is looked upon as an accident even where it presupposes a natural malformation. Same author.

47. The escape of a rupture does not constitute an accident unless it takes place suddenly as a result of a well established act, and is the immediate consequence of either a violent external force or of an extraordinary effort made by the victim in his work. S. & P. 1902, 4, 14.

48. The gradual escape of a hernia under the influence of the ordinary movements of the workman, or its escape during work which in ordinary cases would not be sufficient to produce a like result, does not constitute an accident to a person who showed signs on his person of his having previously suffered from rupture, and who had been discharged from military service on that account. Nancy, 23 Oct. 1901, S. & P. 1902, 2, 69; Trib. Fed. Suisse, 5 Oct. 1898, S. & P. 1902, 4, 14.

49. Hernia may, however, be held to be an accident when it is shewn to have been caused directly by the work. Trib. civ. de Saint-Gaudens, 11 avr. 1900, D. P. 1901, 2, 12; Trib. civ. de Nancy, 21 mai 1900, D. P. *ibid.;* Lyon, 7 juin 1900, D. P. *ibid.;* Trib. civ. de Lille, 8 nov. 1900, D. P. 1902, 2, 85; Chambéry, 19 nov. 1900, D. P. *ibid.;* Bordeaux, 19 mars 1901, D. P. 1902, 2, 435; Grenoble, 16 avril 1901, D. P. *ibid.;* Limoges, 26 avril 1901, D. P. *ibid.;* Rouen, 30 nov. 1901, D. P. *ibid.;* Besançon, 3 déc. 1901, D. P. *ibid.;* Trib. civ. de Saint-Etienne, 30 déc. 1901, D. P. *ibid.;* Lyon, 9 janv. 1902, D. P. *ibid.*

50. The popular interpretation must be put on the word "Accident." That interpretation excludes idiopathic diseases, but includes an illness brought about by an external happening.

51. Thus, a workman who died of anthrax contracted from the wool on which he was working was *held* to have died from

an "accident arising out of and in the course of" his employment, within the meaning of the Workmen's Compensation Act, 1897. (Lord Robertson, dissenting). Brintons, Lim. *vs* Turvey, 74 L. J. K. B. 474; (1905) A. C. 230; 92 L. T. 578; 53 W. R. 641.—H. L. (E.).

52. Although the Act does not apply to those professional maladies to which no fixed date or certain origin can be attributed, and which are only the consequences of the habitual working at certain trades, it is otherwise with regard to those accidental and pathological affections which, though they arise from the pursuit of certain kinds of work, take their origin in a determined fact which does not always happen in the course of the employment. Req. 3 Nov. 1903, D. P. 1907, 1.87.

53. The Act should be applied to the case of a tanner who dies from the effects of malignant pustules contracted while handling contaminated skins in his employer's tannery. Req. 3 Nov. 1903, D. P. 1907, 1, 87.

54. The widow of a workman who had committed suicide claimed compensation for his death from his employers. She averred that the deceased, who had already lost the sight of his left eye in the course of his employment, received an injury to his right eye by a splinter of iron penetrating it; that, as a result of the injury, the sight of that eye began to fail, and eventually he became almost blind; that, owing to the gradual loss of sight in his right eye and consequent blindness, his mind became affected and he became insane and committed suicide, and that his death was due to the accident. The arbitrator dismissed the claim as irrelevant, but the Court recalled his determination, and remitted to him to allow a proof. Observations of Collins, M. R. ,in Dunham *vs* Clare (71 L. J. K. B. 683; (1902) 2 K. B. 292) approved. Malone *vs* Cayzer, Irvine & Co., (1908) S. C. 479.—Ct. of Sess.

55. Insanity arising from strong emotions does not constitute an accident. 1 Sachet, No. 266.

56. The widow of a railway conductor who during his employment, committed suicide by throwing himself under the wheels of a moving train, has no right to an indemnity although he was at the time suffering from mental derangement. Trib. Civ. de la Seine, 17 Mar. 1900, D. P. 1901, 2, 11; 2 Sachet, No. 1385.

57. A workman is not acting unreasonably in refusing to undergo an operation on his own doctor's honest advice based on the view that the administration of an anæsthetic would be dangerous to life owing to the workman's state of health. The test in such a case is not whether the operation would or would not on the balance of medical evidence have been successful, but whether the workman was or was not acting unreasonably in refusing to undergo it. Warncken *vs* Moreland & Son (78 L. J. K.B. 332; (1909) 1 K.B. 184) distinguished. Tutton *vs* "Majestic" Steamship, 78 L. J. K.B. 530; (1909) 2 K.B. 54; 100 L. T. 644; 53 S. J. 447; 25 T. L. R. 482.—C. A.

58. Where an injury has occurred in the course of his employment to a workman, causing an incapacity for work which might be removed by a simple surgical operation involving no serious risk, and of such a nature that any reasonable man in his own interest would undergo it, the continuance of the incapacity is due to the workman's unreasonable refusal to undergo the operation and not to the original accident. In such a case the workman cannot obtain continued compensation for the injury from his employer under the Workmen's Compensation Act, 1906. Rothwell *vs* Davies (19 Times L. R. 423) distinguished. Donnelly *vs* Baird, (1908) S. C.

586; 45 Sc. L. R. 394) followed. Warncken *vs* Moreland, 78 L. J. K.B. 332; (1909) 1 K.B. 184; 100 L. T. 12; 25 T. L. R. 129.—C. A.

59. The workman cannot be forced to submit to a second operation after a first operation has failed, especially where its success is not assured by the physician. Trib. civ. de Vannes, 9 Aug. 1900, D. P. 1901, 2, 306; Douai, 14 Nov. 1900, D. P. 1901, 2, 306.

60. And he is not obliged to submit to a first operation if it is of a nature to endanger his life. Trib. civ. de St. Etienne, 20 May, 1904, D. P. 1905, 5, 10; 1 Sachet, No. 469.

61. A fireman in the course of his employment on a steamship burnt his right hand, with the result that his fingers were blistered. A blister on one finger broke, and septic matter got into the wound. The ship's doctor suggested a slight operation, which the man refused to undergo. About a fortnight later the man was discharged, and his finger had shortly afterwards to be amputated. He claimed compensation under the Workmen's Compensation Act, 1906. The evidence of a medical man who saw him on his discharge was that the finger would not have been saved by the suggested operation. The ship's doctor, however, stated that the operation would have cured the finger. The County Court Judge found that the man's refusal to submit to the operation was unreasonable, but in view of the conflict of medical testimony he considered that it was impossible to say whether the operation would have saved the finger or not, and he made an award in favour of the applicant:—*Held,* that the burden was upon the employers to break the chain of causation and to shew that the loss of the finger was due, not to the accident, but to the unreasonable refusal to undergo the operation; that there was evidence

which entitled the County Court Judge to say that the burden of proof had not been discharged, and that therefore the award of compensation was good. Warncken *vs* Moreland & Son (78 L. J. K. B. 332; (1909) 1 K. B. 184) and Tutton *vs* Steamship "Majestic" (78 L. J. K. B. 530; (1909) 2 K. B. 54) explained and applied; Marshall *vs* Orient Steam Navigation Co., 79 L. J. K. B. 204.—C. A.

62. A workman crushed his hand in such a way that it would in the usual course have been amputated. By a skilful surgical operation, however, the hand was saved; but to prevent it becoming stiff and useless a second operation of grafting new skin on a portion of the hand became necessary. This involved the administration of an anæsthetic, under which the man died:—*Held*, that the man acted reasonably in undergoing the original operation; that the second operation was only a second stage of the first; and that death arose from the accident. Shirt *vs* Calico Printers' Association 100 L. T. 740; 78 L. J. K. B. 528; (1909) 2 K. B. 51; 53 S. J. 430; 25 T. L. R. 451.—C. A.

63. A workman who had sustained injury to his right elbow, which disabled him from work, and who had been paid compensation by his employers for more than a year, was then examined by two surgeons on their behalf, who advised that he should undergo an operation for the removal of a piece of the elbow-bone which prevented the free use of the arm. The workman refused, and the payments were discontinued. On an application thereafter to assess compensation the arbitrator found "that the operation (1) is an important minor operation, (2) is not in the nature of an experiment, but is established in surgical practice; (3) has been attended with complete success in all similar cases (five in number) regarding which evidence was led before me; (4) is not attended by

any appreciable risk; (5) will in all probability within two months, or a little longer, restore to the (workman) the use of his right arm, and enable him to earn wages as before; and (6) is such as a reasonable man not claiming compensation or damage would, for his own advantage and comfort, elect to undergo"; he accordingly refused to award compensation. It was stated at the hearing of the appeal, and not disputed, that an eminent surgeon, who had not been a witness before the arbitrator, had examined the workman after, as well as before the arbitration, and was of opinion that the workman should not undergo the operation proposed:—*Held*, on the facts, that the workman was not bound to submit to the operation, and that his refusal to do so did not disentitle him to compensation. *Held* also, that the Court was entitled to take into consideration the facts admitted at the Bar, which shewed that the workman's refusal was reasonable. Sweeney *vs* Pumpherston Oil Co., 5 F. 972.—Ct. of Sess. Rothwell *vs* Davies, 19 T. L. R. 423.

64. A workman received an injury in the course of his employment which necessitated the amputation of one of his fingers. He was put under anæsthetic and the finger was amputated. As he was recovering from the effects of the anæsthetic the surgeons decided to remove a bad tooth of which the workman had complained; further anæsthetics were administered, and an unsuccessful attempt was made to remove the tooth. The workman was then removed to a ward, and shortly afterwards he died. In a claim for compensation by his widow the County Court Judge held on the evidence that the workman died from failure of respiration caused by the administration of an anæsthetic, that it was at least as probable that his death resulted solely from a spasm induced by an attempt to swallow oozing blood in his mouth as that it resulted from the anæsthetic administered for the first operation, and consequently that the widow had not discharged the

onus which rested upon her of proving that the workman's death resulted from his injury by the accident. He therefore refused to award compensation under the Workmen's Compensation Act, 1906. The widow appealed:—*Held*, dismissing the appeal, that the County Court Judge had arrived at a right conclusion. Charles *vs* Walker, 25 T. L. R. 609.—C. A.

65. The accident must not have been brought about intentionally by the person injured. *Infra*, sec. 5.

66. The accident must have incapacitated its victim during more than seven days. *Infra*, sec. 2, (c).

67. The question whether the death of the workman resulted from or has been accelerated by an accident, is a pure question of fact. Warnock *vs* Glasgow Iron & Steel Co., 6 F. 474.—Ct. of Sess.

68. It is for the workman to show that his infirmity is the direct consequence of the accident. In the present state of science, it is impossible to establish a direct connection between a wound, more especially a fracture of one of the lower limbs, and tabes or locomotor ataxia. It can be merely supposed that the wound may have induced the breaking out of the disease, without any of the relations existing between cause and effect being shewn. Grenoble, 31 jan. 1908, D. P. 1909, 2, 158.

69. If the disease be of tubercular origin, the workman must shew that it resulted from the accident, especially as it did not appear that he had made any extraordinary exertions on the day it occurred. Civ. 18 juin 1908, D. P. 1909, 1, 139.

70. Where the workmen take their meals in a room set apart in the factory for that purpose, the meal hour will be considered as part of the working time. Nîmes, 10 août 1900, D. P. 1901, 2, 130.

71. The question whether an accident happening to a workman in leaving his employer's premises arises out of and in the course of his employment is a question of law on which an appeal lies from the decision of the County Court Judge. Gane *vs* Norton Hill Colliery Co., 78 L. J. K. B. 921; (1909) 2 K.B. 539; 100 L. T. 979; 25 T. L. R. 640.—C. A.

72. The workman and his representatives are obliged to prove the happening of the accident. This proof may result from mere presumptions. Trib. civ., Nancy, 21 mai 1900; Lyon, 7 juin 1900, D. P. 1901, 2, 12.

73. Where it was proved that the workman had reached the yard where he was working at the regulation hour, and that after having changed his clothes and taken his lamp he had gone down into a sewer to work, and had not reappeared, it was held that there was sufficient evidence of an accident. Req. 6. juillet 1903, D. P. 1903, 1, 533.

74. Where a porter employed in a house built on a wharf had undertaken, in consideration of a small fee, to watch over in his leisure moments that part of the wharf where a merchant was in the habit of receiving his goods, (without however being obliged to go up into the vessels,) was drowned, his widow was refused an indemnity, as she was unable to show that at the time of the accident her husband was actually engaged in watching over the wharf. Trib. civ., Lyon, 6 août 1901, D. P. 1902, 2, 396.

75. Once the accident is proved the workman is not obliged to show that it arose out of or in the course of his employment. Trib. civ., Lyon, 22 fév. 1900, D. P. 1901, 2, 131.

76. A contrary view however has been adopted by the Cour de Cassation under article 1315 C. N. (1203 C. C.) especially

as the workman's claim was based on a hernia. Req. 8 juill. 1902, D. P. 1903, 1, 252; Req. 19 janv. 1903, D. P. 1904, 1, 516; Req. 27 avr. 1903, D. P. 1904, 1, 116; Req. 23 déc. 1903, D. P. 1904, 1, 517; Req. 29 févr. 1904, D. P. 1906, 1, 101; Req. 4 mai 1905, D. P. 1906, 1, 173; Limoges, 2 mai 1901, D. P. 1902, 2, 435; Nancy, 23 oct. 1901, D. P. *ibid.;* Besançon, 3 déc. 1901, D. P. *ibid.;* Toulouse, 19 mars 1902, D. P. *ibid.*

77. When the captain of a boat belonging to a transportation company was found drowned in the harbor where his boat had been tied up during the preceding night, his representatives were refused the compensation fixed by the Act, as it was not shewn that the accident occurred while he was at work on his boat. Req. 4 mai 1905, D. P. 1906, 1, 173.

78. A captain of a vessel was obliged by the rules to sleep aboard at night. While the boat was moored to the wharf, her voyage being ended, and under the charge of another agent of the owners, the captain fell from the deck and was injured. The accident was held to have arisen in the course of the employment. Civ. c., 10 nov. 1903, D. P. 1904, 1, 73-74.

79. The widow of a workman who died from the effects of internal lesions during his employment, cannot recover under the Act unless she shows what the nature of the lesion was and that it was due to the employment. Req. 29 Fév. 1904, D. P. 1906, 1, 101.

80. It has been held that the claim of the workman's representatives would be disallowed when it was shown by the medical evidence that the accident could not have occasioned, without complications, an incapacity of more than four months, while as a matter of fact the workman, two days after

the accident, died from congestion of the brain, which might have been attributed to a fall from a horse that had happened sometime previously, and the effects of which had not disappeared. Req. 27 avr. 1903, D. P. 1904, 1, 116.

81. A workman will be held to have died from the effects of an accident within the meaning of the Act where it is shown that immediately after having taken part in the lifting of a heavy piece of iron, he complained of a sharp pain in his side and died two days later, having, as appeared by the diagnosis of the doctor, a fracture of one of his ribs followed by pleuritic complications. Req. 18 juillet 1904, D. P. 1906, 1, 107.

82. The burden of proving that an accident arose out of and in the course of the workman's employment lies on the plaintiff; but the burden of proving serious and wilful misconduct lies on the defendant. McNicholas *vs* Dawson, 68 L. J. Q. B. 470; (1899)1 Q. B. 773; 80 L. T. 317; 47 W. R. 500.—C. A.

83. In an arbitration under the Workmen's Compensation Act, 1897, the burden is upon the applicant to prove that the injury was caused by accident arising "out of" as well as "in the course of" the employment of the workman, and if the applicant leaves the case in doubt as to whether those conditions are fulfilled or not, the evidence being equally consistent with their being fulfilled or not fulfilled, he has not discharged the burden of proof. Pomfret *vs* Lancashire and Yorkshire Railway, 72 L. J. K. B. 729; (1903) 2 K. B. 718; 89 L. T. 176; 52 W. R. 66.—C. A.

84. It will be noticed that our statute uses the disjunctive *or*.

85. A workman, who was employed in a colliery, died from blood-poisoning resulting from an injury to his finger. He was working at night, and on the evening of the accident he left his home, which was just over a mile from the pit, with his finger well. He arrived home early next morning with his finger crushed. He continued to work for some days, when blood-poisoning set in, and he died. His widow claimed compensation under the Workmen's Compensation Act, 1897, but the County Court Judge held that he was not entitled to draw the inference that the accident arose in the course of his employment, as it might have occurred on the way home:—*Held*, that the Judge was at liberty to draw the inference that the accident arose in the course of his employment. Per Sir Gobell Barnes, P.: The probability was that the accident happened at the time when the workman was at the pit, because accidents did happen there, rather than at the time when in the ordinary course of life accidents did not happen. Mitchell *vs* Glamorgan Coal Co., 23 T. L. R., 588.—C. A.

86. A workman in the employ of a railway company was in the course of his employment travelling in an ordinary compartment of a passenger train. Persons travelling in the same comaprtment gave evidence that they saw him put the window down and place his basket in the rack, standing close to the door with his face towards it, but that they did not see him do anything else, until, when the train had travelled three hundred yards only from the place at which he entered it, they heard a crash, and he had disappeared. The workman was found lying close to the rail suffering from injuries which caused his death:—*Held*, that, there being evidence that the workman was simply passing as an ordinary passenger might pass, and acting as an ordinary passenger might act, in a train upon a railway, there was evidence on which the County Court Judge was justified in finding that the accident arose "out of" as well as "in the course of" his employment. Pomfret *vs*

Lancashire and Yorkshire Ry., 72 L. J. K. B. 729; (1903) 2 K. B. 718; 9 L. T. 176; 52 W. R. 66.—C. A.

See also, to the same effect, 1 Sachet, No. 322; Trib. civ. Seine, 24 août, 1900, D. P. 1901, 2, 276; Trib. Lyon, 31 mai 1901, Mon. jud. Lyon, 8 juin 1901; Caen, 25 juin 1901, Rec. Gaz. des Trib., 1901, 2e sem. 2, 421.

87. A workman was employed by a lion tamer to look after baggage, clean out lion cages, and generally make himself useful, but it was no part of his duty to feed the lions. One afternoon the workman was left in sole charge of the cages of lions, with orders to see that no harm came to them or any one else by reason of their fierceness. One of the lions got out of a cage and into a dressing room, but there was no evidence to shew how this happened. The workman went into the dressing room and tried to drive the lion back into the cage, when the lion turned on him and killed him. In a claim by the workman's dependants against the employer under the Workmen's Compensation Act, 1906, the County Court Judge dismissed the claim, being of opinion that the facts were consistent only with the deceased having interfered with the lion for some purpose of his own, there being no evidence to support the theory that the lions had fought or that the deceased had acted otherwise on an emergency:—*Held,* allowing the appeal, that, as the deceased had been left in charge, it was his duty to try to get the lion back into the cage, and that as he was killed in the discharge of that duty the accident arose "out of and in the course of his employment." Hapelman *vs* Poole, 25 T. L. R. 155.—C. A.

88. A station policeman in the employment of a railway company was run down by an engine on a siding at the station and died shortly afterwards of his injuries. His widow and children claimed compensation under the Workmen's Compensation Act, 1897, from the railway company. There was

no evidence to shew how or why he came to be at the spot where he was injured, but he might legitimately have been there in the course of his duties as station policeman:—*Held*, that the presumption was that the deceased had been injured by accident arising out of and in the course of his employment, and that in the absence of evidence to the contrary this must be taken to be the fact. Grant *vs* Glasgow and South-Western Railway, (1908) S. C. 187.—Ct. of Sess.

89. A donkey-man employed on a steamship lying in a foreign port went on shore, and on his way back late at night met with a fatal accident. On a claim for compensation under the Workmen's Compensation Act, 1906, it did not appear whether the deceased had gone ashore on ship's business or with or without leave. The only evidence given by the applicant as to the way in which the accident occurred was an extract from an entry in the ship's official log that the deceased, whilst returning on board ship from the shore, more or less the worse for liquor, refused the aid of the night watchman and policeman to assist him up the gangway, and, on reaching the top step, suddenly overbalanced and fell over the gangway main ropes, dropping between the ship and the quay, and striking the iron girder before reaching the water:—*Held*, that it was for the applicant to prove affirmatively that the accident arose out of and in the course of the employment; that there was no presumption in favour of the applicant that the deceased was doing his duty until the contrary was proved; and that as the entry in the log left it that a conclusion perfectly consistent could be drawn, either that the man met his death by an accident arising out of his employment, or otherwise, the applicant failed. Pomfret *vs* Lancashire and Yorkshire Railway (72 L. J. K. B. 719; (1903) 2 K. B. 718) applied. McDonald *vs* "Banana" Steamship, 78 L. J. K. B. 26; (1908) 2 K. B. 926; 99 L. T. 671; 24 T. L. R. 887.—C. A.

90. An engineer employed on a tug was seen in his bunk on board the tug (which was then lying moored to a barge which was moored to a jetty) in the early morning. An hour later it was found that he had disappeared, leaving his working clothes beside his bunk. Two days later his body, clothed in night dress, was found by a diver in the sea near the place where the tug had been moored. According to the medical evidence the deceased's death was due to drowning, but there was no evidence as to how he met his death. The deceased was a man of cheerful disposition and of steady habits, and his death was not caused by suicide:—*Held,* that the arbitrator was entitled to draw the inference that the deceased's death was due to an accident arising out of his employment.—Mackinnon *vs* Miller, (1909) S. C. 373.—Ct. of Sess.

91. A workman was employed to watch trawlers as they lay in a harbour. He was on duty for twenty-five hours, during which time he had to provide his own food, and in connection with his duties it was occasionally necessary for him to be on the quay to which the trawlers were moored. In the course of his watch he left the boats and went to an hotel near at hand for some refreshment. He was absent a very short time, and on his return, while descending a fixed ladder attached to the quay to go on board one of the trawlers, he fell into the water and was drowned. The arbitrator found that the accident to the deceased arose out of and in the course of his employment within the meaning of section 1 of the Workmen's Compensation Act, 1906:—*Held* (Lord Loreburn, L.C., and Lord Gorell dissenting), that there was evidence upon which the arbitrator could so find. Low *or* Jackson *vs* General Steam Fishing Co., 53 S. J. 763; 25 T. L. R. 787; 78 L. J. P. C. 148; (1909) A. C. 523; 101 L. T. 401; H. L. (Sc.).

Cases as to the time and place where the accident occurred.

92. The general rule is that the workman is protected during the hours of employment, and for the rest of the day is in no better position than a member of the public; but work and employment are not co-extensive, and the employment may have commenced before any work has been done. Holness *vs* Mackay, (1889) 2 Q. B. 319.

93. As a rule, the liability of the employer under the Act begins only from the time when the workman has reached the place where his duties call him, and he has placed himself under the orders of his superiors; and an accident cannot be held to have arisen out of or in the course of the employment that happened to the workman on his way to his work. D. P. 1903, 1, 273; Douai, 25 nov. 1902, D. P. 1904, 2, 95; Civ. c. 3 mars 1903, D. P. 1903, 1, 273.

94. A carpenter hired to do work on a railway, was obliged to pass over a dangerous part of the tracks on his way to and from his work. It was held that an accident which happened to him there on his way from his work, arose out of and in the course of his employment. Rouen, 7 juin 1902, D. P. 1904, 2, 167.

95. The workman is protected on his way to and from work so long as he is properly on premises under the control of his employer. Holness *vs* Mackay, (1899) 2 Q. B. 319.

96. An accident happening while the employee was carting coal for his employer to a factory which was not in operation, does not come within the meaning of the Act, as the accident occurred outside the factory. Req. mars 23, 1903, D. P. 1904, 2, 261.

97. An accident is held to have arisen out of the employment where a workman was injured while cleaning a bicycle which he used to visit the customers of the manufactory for the purpose of showing them samples of the work done therein. Req., mai 11, 1904, D. P. 1908, 1, 58.

98. A workman is held to have been injured within the meaning of the Act not only when the accident happened while he was at the work for which he was employed, but also when it occurs while he is awaiting orders at his post, and is injured by coming inadvertently in contact with some shafting connected with the works. Rouen, déc. 26, 1900, D. P. 1901, 2, 276.

99. The employer will be held liable under the Act if the accident happens to the employee at his work or going to it or returning from it, and if it is due to the fact that obstructions of all kinds have been allowed to accumulate along the passages of the factory where he has not been forbidden to go, but into which he has gone, even imprudently, while amusing himself with other employees. Trib. civ. Seine, août 24, 1900, D. P. 1901, 2, 276.

100. It has been held that if the immediate cause of the accident is not in any way connected with the task at which the workman was employed so that there can be no connection established between the accident and his employment the Act cannot be invoked. Thus, a carter sent by his employer for a load, leaves his horse and inadvertently puts his hand on an electric coil which he had approached out of curiosity, and is killed; it was held that the accident did not arise out of the employment. Trib. civ. Hâvre, jan. 18, 1900, D. P. 1901, 2, 131; Nancy, 27 févr. 1901, D. P. 1901, 2, 310; Lyon, 18 mars 1901, D. P. *ibid.;* Paris, 30 mars 1901, D. P. 1902, 2, 404; Trib. civ. de Pontoise, 21 mars 1900, D. P. 1902, 2, 404;

Trib. civ. de Senlis, 19 févr. 1901, D. P. *ibid.;* Trib. civ. de Montbéliard, 21 juin 1901, D. P. *ibid.;* Caen, 17 déc. 1900, D. P. 1901, 2, 131; Trib. civ. de Brive, 23 mai 1900, D. P. *ibid.;* Trib. civ. de Lyon, 12 févr. 1900, D. P. *ibid.*

101. A shepherd newly engaged by a farmer was killed by falling from a waggon which had been sent by the farmer to the shepherd's home, situate several miles from the farm, for the purpose of conveying him with his family and furniture to the cottage that he was to occupy during his employment:—*Held,* that, although there was a contract of service between the farmer and the shepherd, the employment of the latter did not commence when he left his home in the waggon belonging to the farmer, but would have commenced at the earliest period of time when he would have entered on his duties as a shepherd if he had not met with the accident which caused his death, and that therefore the accident did not arise "out of and in the course of the employment" of the deceased. Whitbread *vs* Arnold, 99 L. T. 103.—C. A.

102. An engine-driver was required to be on duty at an engine-shed each morning at 7.45 A. M. To reach the engine-shed his usual and proper mode of access to the railway company's premises was by a gate, from which a path led direct to the engine-shed without involving crossing the rails. On the morning of the accident he left his house considerably earlier than was necessary, so far as his duties were concerned; and when he reached the gate referred to, instead of turning to the left and going direct to the engine-shed, he went in the opposite direction to a signal-box standing in the middle of the lines of rails, in order, for his own purposes, to make certain enquiries of the signalman. Having made these enquiries, he left the signal-box and went in the direction of the engine-shed, and in crossing the rails he was fatally injured:—*Held,* that the accident did not arise out of and in the course of his

employment, and that therefore the company were not liable to pay compensation to his dependants. Benson *vs* Lancashire and Yorkshire Railway, 73 L. J. K. B. 122; (1904) 1 K. B. 242; 89 L. T. 715; 52 W. R. 243; 68 J. P. 149.—C. A.

103. A miner, while proceeding above ground to his work, slipped and broke his leg upon rails belonging to the mine leading to the doorway of a horizontal passage by which the mine was entered, at a spot distant between nine and thirteen feet from the doorway:—*Held,* that the accident arose out of and in the course of the workman's employment. Mackenzie *vs* Coltness Iron Co., 6 F. 8.—Ct. of Sess.

104. A workman employed by contractors, in the course of the execution of a contract made by them with a railway company, in ballasting a siding near the company's line of railway, was, while going to his work, killed by accident by a train upon the railway about one hundred and fifty yards from the place where his work lay, and seven minutes before the time for the commencement of his work. The employers had obtained the license of the company for their workmen to go to the work by getting upon the railway at a certain gate, from which a footpath led by the side of the railway to the work without crossing the main line or going upon it, several sidings intervening between the path and the main line, and they had instructed the workmen to go to the work by this gate:—*Held* (Romer, L. J., dissentiente), that it was no part of the employers' contract with the workman that he should go to the work by the railway, and that the employers owed no duty to him while he was passing along the railway, over which they had no control; and that in the circumstances, as the workman had not at the time of the accident arrived at the place where his work lay, and as the time for the commencement had not arrived, the accident did not arise out of and in the course of the workman's employment within

the meaning of the Workmen's Compensation Act, 1897. Brydon *vs* Stewart (2 Macq. H. L. 30) and Tunney *vs* Midland Railway (L. R. 1 C. P. 291) discussed. Holness *vs* Mackay, 68 L. J. Q. B. 724; (1899) 2 Q. B. 319; 80 L. T. 831; 47 W. R. 531.—C. A.

105. A workman, in accordance with his usual practice, arrived on his employers' premises about twenty minutes before the time for actually beginning work, the train by which he travelled each morning—the only practicable one—taking him thus early to his destination. In giving up his time-ticket immediately after arrival to a night watchman, who said he would deposit it for him at the proper place, the workman sustained injuries by falling into a hole. To the knowledge of the foreman, a number of the workmen arrived equally early and spent the time, till the moment for beginning work, in a mess cabin on the premises, which was provided by the employers:—*Held,* that the accident arose out of and in the course of the workman's employment. Sharp *vs* Johnson & Co., 74 L. J. K. B. 566; (1905) 2 K. B. 139; 92 L. T. 675; 53 W. R. 597.—C. A.

106. Two women, weavers in a linen factory, twenty minutes before 6 A. M. (the statutory hour for beginning work), voluntarily dusted and otherwise regulated their spinning looms for their own satisfaction and comfort in accordance with a practice known to the occupiers of the factory. Adequate provision for the cleaning and regulation of the looms by other persons had been made by the occupiers of the factory. The occupiers being charged with a contravention of sections 23 and 24 of the Factory and Workshop Act, 1901: —*Held,* that the women had not been employed before the statutory hour. Paterson *vs* Duke, 6 F. (Just. Cas.) 53.—Ct. of Justy.

107. A number of colliers lived about six miles from the colliery in which they were employed. A train, composed of carriages belonging to the employers, but driven by a railway company's men, conveyed free of charge the colliers from their home to a platform erected by the employers on land belonging to the railway company, and took them back again. The platform was under the control of the employers and was used exclusively by the colliers, who walked from there along a high road to the colliery, which was about a quarter of a mile away. A collier, whilst waiting on the platform for the return train, was knocked down in a rush for seats, and was killed by the train:—*Held,* that it was an implied term of the contract of service that the trains should be provided by the employers, and that the colliers should have the right, if not the obligation, to travel to and from without charge; and that therefore the employment began when the colliers entered the train in the morning and ceased when they left the train in the evening, and the employers were liable; but that it did not follow that every workman was entitled to the protection of the Act whenever an accident happened to him on his way from his home to his employer's place of business. Cremins *vs* Guest, Keen & Nettleford, 77 L. J. K. B. 326; (1908) 1 K. B. 469.—C. A.

108. A workman living near and usually employed at King's Cross was ordered to work four miles distant at an engine-shed near Hornsey. He was carried by his employers free of charge to Hornsey every morning and back every evening. While on his way from Hornsey Station to the shed, shortly before his day's work began, he was run over by a train and killed:—*Held,* that the man's employment commenced at King's Cross, and that the accident arose "out of and in the course of his employment" within the meaning of section 1, sub-section 7 of the Workmen's Compensation Act, 1897. Holmes *vs* Great Northern Railway, 69 L. J. Q. B.

854; (1900) 2 Q. B. 409; 83 L. T. 44; 48 W. R. 681; 64 J. P. 532.—C. A.

109. The appellant was employed as a collier by the respondents, and it was part of his contract of employment that the employers should pay him his wages at their pay office. The appellant left work on Saturday at 5 A. M. At 12.30 P. M. he was going for his wages along a path which had been made by the respondents for their workmen, and while going along a railway company's line which ran through the respondent's premises he was knocked down by an engine and injured:—*Held,* that he was injured "in the course of the employment" within the Workmen's Compensation Act, 1897, and was entitled to compensation. Lowry *vs* Sheffield Coal Co., 24 T. L. R., 142.—C. A.

110. The authority and control of the employer are the primary elements of his liability and he is not responsible if the accident happens after the work is done and the workman is no longer within the premises where he was employed. So, if the employee leaves the work of his own free will and goes out of the shop into an outbuilding where no duty called him and where the accident happens it cannot be said to have arisen in the course of his employment. Dijon, 11 mai 1903, D. P. 1904, 2, 292; D. P. 1903, 1, 273, note 1-5; Req. 28 mars 1905, D. P. 1908, 1, 218; Req. 4 juil. 1905, *ibid.;* Rouen, 10 jan. 1903, La Loi, 15 fév. 1903.

111. But if the workman was obliged by his contract to remain on the premises after his hours of work, the case would be otherwise. D. P. 1903, 1, 273, note 1-5.

112. Where the workman, after having left his work which he carried on in a dangerous place, retraces his steps without being called back by any reasonable motive connected with

his employment, he does so at his own risk and as an ordinary individual, and if he meets with an accident there after working hours, it will not be held to have arisen in the course of his employment. Rouen, 7 juin 1903, D. P. 1904, 2, 167.

113. Especially if he returned to do something he had been forbidden to do by his employer. Req. 20 mai 1903, D. P. 1904, 1, 116.

114. Accidents happening while work is suspended temporarily have been held not to come within the Act. While he was resting and warming himself some twenty-five yards from the shop, a workman was injured by a handcar passing over the rails he was lying on. The Act was held not to apply. Nancy, 25 avril 1901; Trib. civ., Laon, 12 mars 1900; Trib. civ. Pontoise, 21 mars 1900; Trib. civ. Seine, 26 juin 1901; Grenoble, 15 nov. 1901, D. P. 1902, 2, 404.

115. Where a workman returned to a factory after a fire had broken out therein and all work had ceased, without being ordered to do so and without any desire to help in quenching the flames, but for the sole purpose of recovering some of his clothing he had left behind, and he met his death in a part of the building other than where he usually worked, it was held that his widow had no claim under the Act. Dijon, 9 mai 1900, S. & P. 1901, 2, 189; D. P. 1901, 2, 133; 1 Sachet, No. 381.

116. The ruling might have been different had his object been to assist in saving life or the property of his employer. 1 Sachet, Nos. 381 et s.

117. But a workman will be considered to have met with an accident arising out of the course of his employment where a fire burst out suddenly in a factory, and he was burned while striving to protect the tools he worked with and to stop the

progress of the flames. Nancy, 21 nov. 1902, D. P. 1904, 2, 166.

118. An employee, who had left his station to get a cigarette from a co-laborer and was injured on his way, was refused the statutory indemnity. Trib. civ. Laon, 12 mars 1900; Trib. civ. Pontoise, 21 mars 1900, D. P. 1902, 2, 404. *Contrà* : Amiens, 9 août 1900, Civ. r. 17 fév. 1902, D. P. 1902, 1, 273.

119. A miner left the pithead, where he was working, to get a drink of water, and was killed by a runaway hutch when he was returning:—*Held,* that he was killed "in the course of his employment" within the meaning of the Act. Keenan *vs* Flemington Coal Co., 5 F. 164.—Ct. of Sess.

120. A teamster left the direct way and went over towards a comrade to get a pinch of snuff and to have a chat at a place where his duties did not call him, and in doing so was injured by his cart; it was held that the accident did not arise in the course of the employment. Req. 27 avr. 1903, D. P. 1904, 1, 116.

121. An employee, occupied in emptying a canal barge at a sugar refinery, left his work and went into a part of the building used for the preparation of artificial lighting, sat on a bench and fell asleep, and was burned by some heated scoria blocks that had been taken out of the furnace a short time before. The Act was held not to apply. Dijon, 11 mai 1903, D. P. 1904, 2, 292.

122. An ox teamster was injured by his cart while he was trying to get at his goad which he had dropped for the purpose of giving a light to one of his companions. He was refused an indemnity under the Act. Req. 23 mars 1903, D. P. 1904, 2, 261.

123. A workman left the premises where he was hired and went into a building belonging to a third party for business of his own. While passing through his employer's factory he was injured by a part of the machinery which was not in any way connected with the work he was hired to do and he need not have gone near it on his way out. His claim under the Act was rejected. Civ. r. 1 août 1906, D. P. 1908, 1, 218, and note 12-13.

124. A brickmaker returning to his work after a meal taken outside the brickyard, passed through a tunnel used for drying the bricks and not as a thoroughfare, and was injured by slipping on the rails placed there. It was held that his employer was not liable under the Act. Cass. 2 mars 1903; D. P. 1903, 1, 273, note 1-5; Gaz. des Trib. 9-10 mars 1903.

125. A man working in a quarry, while resting and drinking during a suspension of the work, made a bet that he could touch the electric wires connected with the motor power of the quarry and was killed in doing so:—*Held,* that the accident did not arise out of or in the course of the employment. Trib. civ. Brive, mai 23, 1900, D. P. 1901, 2, 131.

126. An apprentice, whose duty it was to file a piece of iron, left his work for the purpose of amusing himself, and going up a ladder to the shafting of the factory placed twelve feet above the floor and thus out of reach, amused himself there rolling up a piece of string on the shafting, and had his arm caught by it, and was injured:—*Held,* that the accident did not arise out of the employment. Caen, déc. 17, 1900, D. P. 1901, 2, 231.

127. A workman, employed at a coal mine, had finished his day's work, and was proceeding home along a private line of railway occupied by the colliery, when he was run over and

killed at a point two hundred and thirty yards distant from the place where he worked:—*Held* (Lord Young, dissentiente), that the accident did not arise out of and in the course of his employment. Caton *vs* Summerlee and Mossend Iron Co., 4 F. 989.—Ct. of Sess.

128. A collier leaving his employer's premises crossed a line of rails under the control of the employer on which trucks were standing at the time. As he was passing under or between the trucks they were suddenly set in motion, and he was injured. He might have gone round another way by a bridge, but in crossing the line of railway he was taking the route which he had always taken, and one which was recognized by the employer:—*Held,* that the accident arose out of and in the course of his employment. Gane *vs* Norton Hill Colliery Co., 78 L. J. K. B. 921; (1909) 2 K. B. 539; 100 L. T. 979; 25 T. L. R. 640.—C. A.

129. A wiper employed by a railway company crossed over a way which he had been forbidden to take when going home, and was knocked down by a train while in the act of boarding a car in order to shorten his route. He was refused compensation under the Act. Req. 25 fév. 1902, D. P. 1902, 1, 273.

130. A workman employed as a capstanman in a dock, going home at the dinner hour, was, before he reached the dock gates, overtaken by an engine and trucks on an adjoining railway. The workman, in attempting to mount one of the trucks for the purpose of being carried to the dock gates, was seriously injured:—*Held,* that the accident did not arise out of his employment. Morrison *vs* Clyde Navigation Trustees, (1909) S. C. 59.—Ct. of Sess.

131. A workman employed at a coal mine proposing to go home by crossing a railway siding on the premises of the mine

owners, and by trespassing along a railway, was injured while crossing the siding. There were two exits provided for leaving the mine, neither of which crossed the siding. The workman was aware that the short cut was not the proper exit, but there was no express prohibition against workmen leaving the mine at this spot:—*Held,* that the accident did not arise out of and in the course of the workman's employment. Haley *vs* United Collieries, (1907) S. C. 214.—Ct. of Sess.

132. A workman employed at a railway station was killed on his way to work while crossing over the tracks, instead of following a tunnelled way provided by the company along the tracks which would have enabled him to reach his destination in safety; it was held that the Act did not apply. Civ. c. et Civ. r. 3 mars 1903; D. P. 1903, 1, 273.

133. In order that the accident may be held to have arisen out of the employment it must have occurred while the employer was obliged to look after the safety of his employee and this ceases only when his authority over his employee is at an end. 1 Sachet, No. 307; D. P. 1902, 1, 273, note 3-13; Civ. c. juil. 8, 1903, D. P. 1903, 1, 510.

134. Any accident which may happen during the hours of employment and at the place where the work is being done, is held to have arisen out of the employment, and it is not necessary that it be immediately connected with the task assigned to the workman who falls a victim to it. The place of employment is not limited to the station assigned to the workman but it does not necessarily include all the premises connected with the enterprise. The limits of the place of employment are to be determined according to the circumstances of each case. Civ. r. fév. 17, 1902, D. P. 1902, 1, 273; Rennes, déc. 17, 1900, D. P. 1902, 2, 463; Civ. c. août 1, 1906, D. P. 1908, 1, 218; D. P. 1903, 1, 273, note 1-5; Civ. c. mars 3,

1903; D. P. 1903, 1, 273; D. P. 1908, 1, 218, note 7; D. P. 1906, 1, 103, note 3-4.

135. A workman employed by the defendants to attend to a steam engine within a shed and to a mortar pan outside the shed worked by the steam engine and used to grind mortar for a building, was seen to start the engine. Very shortly afterwards he was found involved in the machinery, whereby he was killed. The shed had two doors, one of which was safe; the other, a small one, used occasionally for ventilating the shed, was dangerous by reason of its proximity to a revolving shaft, and the man had been forbidden to use it. It appeared that the man was approaching the small door when he met with an accident:—*Held,* that there was evidence that the accident arose out of and in the course of his employment. McNicholas *vs* Dawson, 68 L. J. Q. B. 470; (1899) 1 Q. B. 773; 80 L. T. 317; 47 W. R. 500.—C. A.

136. A steward employed on board a ship went ashore while the ship was discharging cargo in port during hours when he was at liberty so to do. Being to some extent under the influence of drink, he returned on board the ship by means of the cargo skid in order to escape the observation of the officers of the ship, instead of by the ordinary gangway, a course that was apparently contrary to orders. He slipped on the deck and fell down the unguarded hatch into the hold, sustaining injuries which resulted in his death:—*Held,* that the accident arose "out of and in the course of the employment" of the deceased, within the meaning of the Workmen's Compensation Act, 1906; and that therefore the dependants of the deceased were entitled to compensation. Robertson *vs* Allan, 98 L. T. 821.—C. A.

137. A fireman employed on a steamship lying alongside a quay in South Brooklyn Harbour went ashore in the evening

with four other members of the crew to buy necessaries not provided by the shipowners. There was a conflict of evidence as to whether they had obtained permission to go ashore. They made their purchases at stores authorised by their employers and then visited a beer shop, and returned to the ship some time after midnight. The mode of access to the ship was an ordinary wooden ladder, the upper part of which was fastened by a rope to the ship's rail, the lower part being loose and resting upon the quay. Whilst climbing the ladder the fireman fell into the sea and was drowned:—*Held* (Fletcher Moulton, L. J., dissenting), that the deceased had gone ashore for his own purposes; that it was immaterial whether he had permission or not; and that, as he had not actually got back on board, the accident did not arise out of and in the course of his employment, and he was not within the protection of the Workmen's Compensation Act, 1906. McDonald *vs* "Banana" Steamship (1908) 2 K. B. 926, followed. Robertson *vs* Allan Brothers & Co. (77 L. J. K. B. 1072) distinguished. Moore *vs* Manchester Liners, 78 L. J. K. B. 463; (1909) 1 K. B. 417; 100 L. T. 164; 25 T. L. R. 202.—C. A.

138. The question whether a servant who violates his master's order is or is not acting in the course of his employment depends on whether the order is or is not one limiting or defining the scope of the servant's employment. Whitehead *vs* Reader, 70 L. J. K. B. 546; (1901) 2 K. B. 48; 84 L. T. 514; 49 W. R. 562; 65 J. P. 403.—C. A.

139. A workman who goes to work in spite of the prohibition of the employer, cannot recover under the Act if injured. Trib. civ. Saint-Etienne, 3 mars 1902, Mon. jud. Lyon, 11 mars 1902; Trib. civ. Seine, 11 janv. 1902, Mon. jud. Lyon, 27 mars 1902.

140. Where the master has given orders that no one is to go near a certain spot on account of the danger, the representatives of a workman who in disobedience to such orders did go near the spot and was killed, have no right of action. Pau, 13 juil. 1901; S. & P. 1901, 2, 232.

141. A wheelwright working at a planing machine who notwithstanding a strict rule of the shop shoved his left hand into the moving frame where it was severed, has no right of action. Rouen, 28 fév. 1900, D. P. 1900, 2, 197.

See post, section 5 of the Act.

142. An accident will be held to have arisen out of the employment where it is the direct and immediate result of the work to be done by the workman, for instance, where a joiner injures himself with the hammer or the saw he is using, provided the accident occur in one of the enterprises referred to in the Act. Even if he is at the time working at something outside of his usual occupations, if his employer has consented expressly or tacitly to his doing so, the Act will apply. For instance, where a carter employed by a refiner of sulphur was injured while carting for a wine-grower with whom he had been put to work by his employer during a dull season of his regular business, the latter was held liable under the Act. Trib. civ. Narbonne, 13 fév. 1900, D. P. 1901, 2, 82.

143. Where the workman left the place where he was usually stationed to take the place of another workman at a different kind of employment to which he was unacustomed, and was injured, the accident was held to have arisen out of the employment ,as the foreman should have prevented him from undertaking work which was beyond his skill. Trib. civ. de Lorient, 5 juin 1900, D. P. 1901, 2, 82.

144. The ruling would be otherwise had the change of employment been undertaken without the knowledge or consent of the overseer. A workman employed in a saw-mill whose duty consisted of withdrawing and piling the boards after they had passed through the saws, undertook before work began in the morning to oil the machinery in the place of his father whose duty it was to attend to this task, and was injured:—*Held*, that the accident did not arise out of his employment. Dijon, 25 fév. 1901, D. P. 1901, 2, 372.

145. If a person is employed in a factory to do purely unskilled labour, and is expressly forbidden to touch any of the machinery, and he meets with an accident in attempting, in violation of such orders, to clean a certain machine, such accident is not one "arising out of and in the course of the employment" within the Workmen's Compensation Act, 1897, so as to entitle him to compensation from his employer. Lowe *vs* Pearson, 68 L. J. Q. B. 122; (1899) 1 Q. B. 261; 79 L. T. 654; 47 W. R. 193.—C. A.

146. Mullen, a workman, justifiably left the works in which he was employed, to obtain refreshment. While returning to his work he met a squad of his fellow-workmen, who were engaged in hauling a bogie across a public street which intersected the works. McGinlay, a fellow workman of Mullen, came up and improperly seized the rope by which the bogie was being hauled, and began to pull against the squad. In doing this McGinlay slipped and fell over the rope, and was in danger of being injured by the bogie. Mullen came to McGinlay's assistance, and succeeded in rescuing him from danger, but before he himself could get out of the way he was jammed by the bogie and sustained severe injuries:—*Held*, that Mullen had not been injured by accident arising out of and in the course of his employment. Mullen *vs* Stewart, (1908) S. C. 991.—Ct. of Sess.

147. It is not necessary that the accident should arise out of the work its victim was employed at. It is sufficient that it arose in the course of his work, by reason of work done by other workmen, or of the machinery for which the employer is responsible. It is enough that the accident was inherent to the work which was being done in the interest of the employer, and is connected in some way with the employment of the victim, and it will be held to be so connected when it happens during the work and at the place where the work was being done, either through the machinery used or through the other employees or even through the forces of nature if the work is such as to provoke or aggravate their action. Rouen, fév. 22, 1900, D. P. 1900, 2, 181; Dijon, mars, 11, 1903, D. P. 1904, 2, 292.

148. But where a workman employed in a quarry was wounded while setting off fireworks at the request of his employer during a public celebration, it was held that the Act did not apply . Trib. civ., Saint-Gaudens, mars 12, 1900, D. P. 1901, 2, 82.

149. So also where a workman employed as a chemist was injured after his day's work was over while he was driving a client from the factory to the railway station, at the request of his employer. Trib. civ. Largentière, déc. 21, 1900, D. P. 1901, 2, 372.

150. A workman is considered to be at the place of employment wherever he is sent by the orders of his employer, or by the necessities of the employment, even if it be at his own home. Civ. c. fév. 13, 1906, D. P. 1908, 1, 58; Civ. c. juil. 17, 1907; Civ. c. août 6, 1907; Civ. c. juin 24, 1905, D. P. 1908, 1, 218.

151. The employer will be held liable for an accident under the Act where it is due to the caving in of the flooring of

a place where the employee was eating during the noon recess, and which was used for storing provisions, and for eating purposes by the workmen. Nîmes, août 10, 1900, D. P. 1901, 2, 130.

152. A clerk employed at engineering works, whose duty it was to weigh and record all articles sent out from the works, met with an accident, which resulted in his death, while helping workmen to carry a heavy article to the weighing-machine. It was found in fact that his duty in relation to articles sent out was "confined to weighing the articles, which it was the duty of other employees to carry to the weighing-machine":—*Held,* that the accident arose out of and in the course of his employment, and that his widow was entitled to compensation. Goslan *vs* Gillies, (1907) S. C. 68.—Ct. of Sess.

153. A laborer, employed in a steam joinery shop, whose duties were not connected with the management of the machinery, met with a fatal accident while assisting a machineman to replace some loose belting upon the machinery while in motion. It was found in fact that the foreman might have ordered the deceased to assist in replacing the belting, but no such order had been given:—*Held,* that the accident arose out of and in the course of the laborer's employment within the Act. Menzies *vs* McQuibban, 2 F. 732.—Ct. of Sess.

154. The Workmen's Compensation Act, 1897, applies to the case of a workman engaged in an employment within that statute, who, on an emergency, does in his master's interest an act outside the scope of that employment, and is injured by an accident arising out of and in the course of so doing. Rees *vs* Thomas, 68 L. J. Q. B. 539; (1889) 1 Q. B. 1015; 80 L. T. 578; 47 W. R. 504.—C. A.

155. On the other hand it has been held that short interruptions of the work and short absences from the work table such as take place every day in the usual course of things, should not be taken into account. Thus, where an accident happened while the work of a night gang at a railway station was suspended under a rule allowing two hours for the purpose of resting and taking nourishment, the Act was applied inasmuch as they could not leave the station during the recess, or go away from the building where their meals were taken, and were still under the control of the foreman who might have called upon them to do supplementary work at any moment. 1 Sachet, Nos. 332, 345, 347; Rouen, 28 fév. 1900, S. & P. 1901, 2, 267; D. P. 1900, 2, 181.

156. A steamship was moored to a quay in a dock discharging her cargo under a stevedore who had contracted with her owners to unload her. The laborers in the employment of the stevedore were each appointed to work in connection with a particular hold of the vessel, either on board her or on the quay. One of the laborers who was employed on the quay to discharge cargo from the after-hold, and who did not require, in the performance of his duty, to go on board the vessel, on being informed that one of his fellow-workmen employed in the forehold was lying there in an unconscious condition owing to inhaling noxious gas, offered to attempt a rescue, and after a handkerchief had been tied round his mouth he was lowered into the forehold, where both he and the man he had attempted to rescue were suffocated by carbonic-acid gas. In doing what he did the workman acted without instruction from his employer—the stevedore—who had gone for rescue appliances:—*Held,* that the workman met his death by an accident arising out of and in the course of his employment. (Lord Kyllachy, dissenting). London and Edinburgh Shipping Co. *vs* Brown, 7 F. 488.—Ct. of Sess.

157. The employer is liable for an accident to his workman while the latter is helping the employees of a third party if it appears that the accident happened at the place and during the hours of employment, and was in some way connected with the work; and this would be the case if it were shewn that the workmen were in the habit of lending assistance to one another for the benefit of their respective employers. Req. juin 11, 1907; Req. nov. 7, 1905, D. P. 1908, 1, 60.

158. A carter who was injured while aiding another teamster to surmount the steep approach to a bridge, in accordance with the custom of the locality, may recover compensation under the Act. Req. 7 nov. 1905, D. P. 1908, 1, 60.

159. Where a workman employed by a railway company to light the signal lamps, left his work to assist some men who were unloading packages from a car which the consignee of the goods was obliged by his contract to unload himself, and was injured, the accident was held not to have arisen out of his employment. Trib. civ. Lyon, fév. 22, 1900, D. P. 1901, 2, 131; Civ. r. nov. 24, 1903, D. P. 1904, 1, 73.

160. So, also, where a pavior left his work to assist in rolling a cask of wine, and where a carter went to the assistance of the workman of another employer to replace a handcar upon a track. Grenoble, nov. 15, 1901; Trib. civ. Seine, juin 26, 1901, D. P. 1902, 2, 404.

161. The Act is also inapplicable where an accident has happened to the workman while employed, even with the knowledge of his employer, at work which does not come within the meaning of the statute. 1 Sachet, No. 363.

162. Thus, where workmen were taken from the factory to assist in pressing apples in a cider press at the employer's private dwelling, and were injured, the accident was held not to have arisen out of the employment. Caen, oct. 31, 1900, D. P. 1902, 2, 68.

163. A carter was injured jumping off his cart to go to the assistance of a third party. The accident was held to have arisen in the course of the employment. Civ. c., août 4, 1903, D. P. 1903, 1, 510.

164. The applicant was a watchman in the employment of a borough council, and was employed to watch at night some sewer work, his duty being to look after tools and traffic lamps, and to prevent accidents. There was a watch-box for him to sit in. The tools were kept in a shanty which was constructed of scaffold poles, trestles, planks and a tarpaulin. Upon the night in question there was a fire outside the watch-box, but as it was raining the applicant lighted a fire in the shanty and proceeded to cook his food there. While so engaged the shanty fell down and injured him. The evidence showed that the workmen were in the habit of having their food in the shanty in the day time, and there was no evidence that the applicant was expressly prohibited from making use of the shanty, though the borough engineer gave evidence that the applicant had no business in the shanty at all, and that he would discharge a watchman if he had a fire in the shanty at night. In proceedings to assess compensation under the Workmen's Compensation Act, 1897, the County Court Judge found that the applicant was not properly in the shanty, having regard to his duties, and that therefore the accident did not arise out of the employment:—*Held,* that, in the absence of a prohibition against the applicant using the shanty, the evidence showed that the accident arose out of and in the course of the employment and the Act applied. Morris *vs* Lambeth Council, 22 T. L. R. 22.—C. A.

165. A workman employed in the renovation of the interior of a church found the church door locked on his arrival in the morning, and was unable to unlock the door. To gain access to his work he climbed the iron railing of a neighboring school yard, which enabled him to scale the church yard wall and enter the church by a window. The railing was topped by spikes, one of which pierced his foot, from the effects of which injury he died:—*Held* (Lord Montcreiff, dubitante), that the accident did not arise "out of and in the course of the employment" of the workman. Gibson *vs* Wilson, 3 F. 661.—Ct. of Sess.

166. A workman had been kept so long on duty after nightfall that he was obliged to take some nourishment, and for that purpose he went into the boiler house; he went forward to throw away the fragments left after his meal, and met with a fall due to the darkness of the passage; it was held the accident had occurred in the course of the employment. Civ. r., 23 avril 1902, D. P. 1902, 1, 273.

167. A workman was employed to watch trawlers as they lay in harbour. He was on duty for twenty-five hours, during which time he had to provide his own food, and in connection with his duties it was occasionally necessary for him to be on the quay. In the course of his watch he left the boats and went to a hotel which was a short distance from the harbour, where he got a glass of beer and half a glass of whisky. He was absent a very short time, and on his return, while descending a fixed ladder attached to the quay to go on board one of the trawlers, he fell into the water and was drowned:—*Held,* that the accident to the deceased did arise "in the course of his employment" within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1906. Jackson *vs* General Steam Fishing Co., (1909) S. C. 63—Ct. of Sess.

168. A workman engaged in overtime work on a vessel

went ashore at night, against the orders of his foreman, to purchase bread. The vessel was moored six or seven feet from the quay, and a gangway was, to the knowledge of the workman, placed between the vessel and the quay. The deck of the vessel was three feet above the quay. The workman in returning went past the end of the gangway and attempted to jump from the quay to the vessel, but fell into the water and was drowned. It was a rule of the employment (which, however, was frequently broken) that men should not jump between the vessel and the quay, and the deceased had been warned against this practice:—*Held*, that the accident did not arise out of and in the course of the deceased's employment. Martin *vs* Fullerton (1908) S. C. 1030.—Ct. of Sess.

169. A workman was employed in the defendants' works. In those works there was a large hot-water tank, five and a-half feet from the floor, and to get to the top of it there was a platform, the top of the tank being two and a-half feet higher than the platform. No one except the chief engineer and the chief stoker was allowed to deal with the tank in any way. The room in which the tank was situated was about 156 yards from the room in which the particular workman was employed. One night, while working on the night shift, the workman ate his supper at the top of the tank, and when he had finished and about to go back to his work he fell through an aperture into the tank and thereby sustained injuries which resulted in his death:—*Held*, that the accident did not arise out of the workman's employment. Brice *vs* Lloyd, 53 S. J. 744; 25 T. L. R. 759.—79 L. J., K. B. 37; (1909) 2 K. B. 804; 101 L. T. 472.—C. A.

Cases as to the nature of the act causing the injury.

170. During the meal hour, a workman was injured by being caught in a revolving belt which, out of fun, he would

grasp and hold for a few moments and then let go. It was held that the accident did not arise out of the employment. Trib. civ., Hâvre, 9 mars 1901, D. P. 1901, 2, 310.

171. Where a laborer was injured while playing with a set of rollers with which he had no business, but with which he was amusing himself by dropping pennies between the wheel; it was held that the accident did not come within the meaning of the Act. Paris, 30 mars 1901; Douai, 13 mai 1901, D. P. 1902, 2, 404.

172. It has been held, on the other hand, that the employer is liable in like cases unless the victim brought on the accident intentionally, and the fact that the laborer's duties did not bring him in contact with the rollers by which he was hurt, and that he was amusing himself with them in defiance of orders to the contrary, did not alter the case, although it might be taken into consideration by the court for the purpose of reducing the indemnity. Civ. c., 8 juil. 1903, (1er arrêt), D. P. 1903, 1, 510.

173. Cases have arisen where the employer's liability has been extended to accidents due to the behaviour of other workmen for whose conduct he was responsible. Thus, where a workman was struck by an object hurled at him by another workman who, through the requirements of the work, was placed near him. Douai, 7 août 1900, D. P. 1901, 2, 85 ; Trib. civ., Senlis, 19 fév. 1901, D. P. 1902, 2, 404; Civ. r. 23 avril 1902, 1, 273; Paris, 14 nov. 1902, (sous req. 18 avril 1904), D. P. 1906, 1, 103.

174. An injury inflicted on the cashier of a factory who was assaulted by a workman while settling the latter's account under instructions from the employer, was held to come within the Act. Dijon, 30 mars 1903, D. P. 1904, 2, 166.

175. A workman injured while quarrelling with a comrade, or while taking part with him in horse play, has no remedy under the Act against his employer. Trib. civ., Montbéliard, 21 juin 1901, D. P. 1902, 2, 404; Nancy, 11 juin 1902, D. P. 1903, 2, 429.

176. If however the quarrel was in any way connected with the employment, the rule would be different. For instance, where the workman was assaulted while in the performance of his duty, and, in the common interest of all, was drawing the attention of a younger comrade to the serious consequences which might result from the manner in which the latter was attending to a steam engine on the premises, the accident was held to have arisen in the course of the employment. 1 Sachet, No. 427; Trib. civ., Vienne, 27 déc. 1902, D. P. 1902, 2, 404.

177. M., a workman, was oiling with a brush a machine at which he was working. The brush was not the brush belonging to the machine, and M. knew this. While M. was so engaged, a fellow workman to whose machine the brush belonged and who required it for his work, came up angrily, said the brush was his, and took hold of it. M. asked C. to wait a moment, but C. pulled the brush out of M.'s hand, and, in doing so, unintentionally injured M.'s hand by drawing it across a sharp piece of iron:—*Held,* that the injury to M. was caused by an accident arising out of and in the course of his employment, and that he was therefore entitled to compensation. McIntyre *vs* Rodger, 6 F. 176.—Ct. of Sess.

178. A workman was leaning against a window after his day's work was done, when he was accidentally wounded by a shot from a gun that had been surreptitiously brought into the building by a comrade. It was held that the case did not come within the Act. Lyon, 18 mars 1901, D. P. 1901, 2, 310.

179. An employee in a brewery was, in obedience to orders, helping to unload a waggon on the highway, when he was injured by a spinning top with which a child was playing in the street; it was held that it was an accident within the Act. Civ. c., août 1, 1906, D. P. 1908, 1, 218.

180. A workman in the course of his employment in a "factory" within the meaning of the Act met with an accident caused by his fellow-workmen, who at the time were not engaged at their work, but were indulging in horse-play:—*Held,* (Lord Moncreiff dissenting), that the accident was not one arising "out of" the employment in the sense of section 1, sub-section 1 of the Act, and that the injured workman was not entitled to compensation under the Act. Falconer *vs* London and Glasgow Engineering, etc., Co., 3 F. 564.—Ct. of Sess.

See also, to the same effect, Nancy, 27 fév. 1901, D. P. 1901, 2, 310; 1 Sachet, No. 421; Nancy, 9 mai 1900, D. P. 1901, 2, 85; Lyon, 18 mars 1901, D. P. 1901, 2, 310, reversing Trib. civ. Saint-Etienne, 29 oct. 1900, D. P. 1901, 2, 85.

181. One of a large number of boys employed in the coach-painting department of the works of a railway company, while engaged in his work, received an injury by a blow from a piece of iron thrown in anger by one of two other boys in the same employment as the other, neither of them being at the time engaged upon his work:—*Held,* that the accident causing the injury did not arise out of the employment of the injured boy within the meaning of section 1, sub-section 1 of the Workmen's Compensation Act, 1897. Armitage *vs* Lancashire and Yorkshire Railway, 71 L. J. K. B. 778; (1902) 2 K. B. 178; 86 L. T. 883; 66 J. P. 613.—C. A.

182. Where the workman was busied at his task, and his attention was so absorbed by it that he could pay little heed

to what was going on about him, and the presence of his fellow workmen who caused the injury was imposed upon him by the nature of his employment, it was held that the employer was liable under the Act. Paris, 14 nov. 1902, (sous Req., 18 avril 1904), D. P. 1906, 1, 103.

183. Where an accident happens to a workman while engaged at his work by reason of the tortious act of a fellow-workman, which has no relation to their employment, the accident is not one "arising out of and in the course of the employment" within the meaning of section 1 of the Workmen's Compensation Act, 1906. Armitage *vs* Lancashire and Yorkshire Railway (71 L. J. K. B. 778; (1902) 2 K. B. 178) considered and applied; Fitzgerald *vs* Clarke, (1908) 2 K. B. 796; 99 L. T. 101.—C. A.

184. A was in the employment of B, a contractor, as foreman of sewage works. Certain pipes which had been laid in the street in the course of the work were wantonly broken. B directed A to protect the pipes, and while A was so engaged further damage was done, for which A, under B's direction, demanded payment from the wrongdoers. This led to an altercation, in the course of which B was struck and fell, and A on going to his rescue was stabbed, and died:—*Held,* that A's death was not caused by an accident arising out of and in the course of his employment. Collins *vs* Collins, (1907) 2 Ir. R. 104.—C. A.

185. An engine-driver while driving an engine was injured by a stone thrown wilfully by a boy from a bridge under which the railway passed:—*Held,* that the injury was due to an accident arising out of and in the course of the engine-driver's employment, inasmuch as the risk of being struck by stones thrown at trains is one to which engine-drivers are specially

exposed. Armitage *vs* Lancashire and Yorkshire Railway, 71 L. J. K. B. 778; (1902) 2 K. B. 178, and Falconer *vs* London and Glasgow Engineering and Iron Shipbuilding Co. (3 Ct. of Sess. Cas. (5th Ser.), 564) considered; Challis *vs* London and South-Western Railway, 74 L. J. K. B. 569; (1905) 2 K. B. 154; 53 W. R. 613.—C. A.

186. A teamster in the course of his employment was taking his meal in the stable, when one of the stable cats flew at and bit him, the bite resulting in serious injury:—*Held,* that the accident arose out of and in the course of his employment, and that he was entitled to compensation for the injury. Rowland *vs* Wright, 77 L. J. K. B. 1071; (1909) 1 K. B. 963; 99 L. T. 758; 24 T. L. R. 852.—C. A.

187. In the case of a claim for compensation under section 1, sub-section 1 of the Workmen's Compensation Act, 1906, for personal injury by accident, it is not enough for the applicant to say that the accident would not have happened if he had not been engaged in the employment or had not been in the particular place in which the accident occurred. He must go further, and establish that the accident arose because of something he was doing in the course of his employment or because he was exposed by the nature of his employment to some peculiar danger.

A lady's maid in the course of her employment was one evening engaged in sewing in her employer's nursery. The electric light in the room was on, and the night being very hot the windows were open. A cockchafer flew in, and the maid in throwing up her hand to protect her face struck her right eye so violently with the bent knuckle of her right thumb that her sight was permanently affected:—*Held,* that the injury was not an accident arising out of her employment, inasmuch as the risk of the occurrence in question was not in-

cidental to the employment as a lady's maid, and she was not placed by reason of her employment in a position of special danger, and that therefore she was not entitled to compensation.

Andrew *vs* Failsworth Industrial Society (73 L. J. K. B. 510; (1904) 2 K. B. 32); Challis *vs* London & South Western Railway (74 L. J. K. B. 569; (1905) 2 K. B. 154) and Rowland *vs* Wright (77 L. J. K. B. 1071; (1909), 1 K. B. 963) distinguished; Craske *vs* Wigan, 78 L. J. K. B., 994.

188. Both the workmen and the employees in a factory may claim the benefit of the Act, and there is no distinction to be made between those who take part in the work inside, and those who aid outside in carrying away the products of the factory. Civ. c., fév. 13, 1906, D. P. 1908, 1, 58.

Workmen.

189. Workmen are those who do manual labor. Loubat, No. 383.

Apprentices.

190. Apprentices are those who are under a contract to work for their employer at some trade in return for the teaching and remuneration they may receive from him. Addison, Contracts, 868.

See R. S. Q. 3829 *et seq.*

191. They are assimilated to workmen who are paid the lowest wages, by section 7.

Employees.

192. Employees are those who are engaged in the work of the establishment otherwise than by way of manual labor. Loubat, no. 384.

193. They may take the benefit of the Act if, from the nature of their employment and the place where they work, they are exposed to the dangers arising from the business or industry. Bookkeepers, clerks, and others who work in the buildings devoted to the manufactory, are employees within the Act. D. P. 1900, 4, 19, note 3; Loubat, no. 385.

194. The workman, apprentice or employee must prove the existence of a contract of hire of services, or articles of apprenticeship. The contract may be express or implied, oral or written, and may be proved by all manner of evidence. The fact of the employee having worked under the direction and control of his employer, suffices to prove a contract of hire. Trib. civ. de Vendôme, 13 fév. 1900, D. P. 1901, 2, 85; Paris, 21 juill. 1900, D. P. 1901, 2, 156 ; Toulouse, 3 déc. 1900, D. P. 1901, 2, 155; Req. 2 déc. 1901, D. P. 1902, 1, 403 ; Sachet, no. 156.

195. The law applies to the two sexes. D. P. 1898, 4, 59. Note 45.

196. Workmen and other employees who, besides receiving their wages, participate in the profits of the business to a small extent, come under the Act. 1 Sachet, no. 179.

197. If the contract of hire be tainted by fraud, for instance, if the employee has misrepresented the fact that he was under the age fixed by the Factory Act, and has given a false name so as to prevent proper enquiry on the subject being made, he will not be given the benefit of the Act in case of accident. Cass., 2 déc. 1901, D. P. 1902, 1, 403; S. & P. 1902, 1, 181.

Outworkers, etc.

198. Employees must not be confounded with those who undertake the performance of work at their own home or on premises which are not under the control of the employer who gives out the material.

199. Nor with those who undertake to do the work by the piece, and who are not under the control of the employer during their work.

200. Nor with sub-contractors, as they are generally styled, who undertake a certain portion of the work to be done, and hire their own men to do the work, and who are not under the control of the head contractor as to the manner in which the work is to be done so long as it is satisfactory. D. P. 1901, 4, 83; Toulouse, 11 jan. 1903, D. P. 1904, 2, 172; Toulouse, 3 déc. 1900, D. P. 1901, 2, 155; Civ. c. 6 août 1902, D. P. 1902, 1, 579.

But see Douai, 25 juil. 1900, D. P. 1901, 2, 155; Amiens, 20 mars 1900, D. P. 1900, 2, 268; Civ. r., 25 juin 1902, D. P. 1902, 1, 341; 2 B.-L. & W. 1780.

201. The Act applies to the case of a workman taken on trial to whom an accident happens while he is on trial. Trib. civ., Seine, 27 jan. 1908, D. P. 1908, 5, 47.

202. It is not the nature of the work done by the workman, but the business of the employer which determines the applicability of the Act. Civ., 29 déc. 1908, D. P. 1909, 1, 510.

203. The following cases may serve, by analogy, to help in the solution of some of the difficulties which may arise in the application of the Act.

204. The applicant, a charwoman, who had been employed by the respondents on Fridays and alternate Tuesdays for a considerable period, met with an accident while working for them on one of the stated days. She came regularly to the respondents on those days without any special instructions. Upon an application for compensation under the Workmen's Compensation Act, 1906, the County Court Judge found that the applicant was in the regular, and not casual, employment of the respondents, and made an award in her favour:—*Held,* that it was not competent to the Court to interfere with this finding, there being ample evidence to support it. Dewhurst *vs* Mather, (1908) 2 K. B., 754.—C. A.

205. Although a workman may have well-founded expectation of employment, which would normally result in employment at intervals more or less regular, yet such employment is of a "casual nature" within the meaning of section 13 of the Workmen's Compensation Act, 1906, the burdens of which Act are not to be extended to a workman, not part of a regular establishment, called in to do a particular job as and when necessity arises. Where, therefore, a window cleaner, who was called in to clean the windows of a private dwelling-house at intervals of about one month or six weeks — there being no agreement of permanent or periodic employment, nor any contract entitling either the householder to claim the services of the workman or the workman to claim damages if not employed—met his death through an accident while engaged in cleaning the windows, it was *held* that his dependant was not entitled to compensation. Hill *vs* Begg, (1908) 2 K. B. 802; 99 L. T. 104—C. A.

The work of building.

206. The Act applies to all those taking part in the construction of the building, from the laying of the foundation

to the covering of the roof, and according to some decisions, to the completion of the inside decoration and furnishing.

207. For instance, it applies to stone cutters, stone masons, bricklayers, carters, carpenters, joiners, roofers, plumbers, plasterers, painters, glaziers, locksmiths, steam and gas fitters, well sinkers, stair builders, chimney sweeps. Loubat, no. 5; 1 Sachet, no. 109; Trib. Coutances, 11 avril 1900, sous Caen, 31 oct. 1900, S. & P. 1901, 2, 211; D. P. 1902, 2, 70; 2 B.-L. & W. 1740.

208. And also to architects employed on the premises to superintend the construction. D. P. 1900, 5, 72, no. 8.

209. Also to paperhangers, decorators, furniture makers, etc., provided their business is not limited to the selling by retail of ready made articles. D.P. 1900, 3, 72, no. 15; Limoges, 29 mars 1901, Mon. jud. Lyon, 18 jan. 1902; Trib. d'Avranches, 24 mai 1901, Mon. jud. Lyon, 23 nov. 1901; Rouen, 28 fév. 1900, D. P. 1900, 2, 197; 2 B.-L. & W. 1740.

210. A sub-contract for plumbing work was entered into with certain contractors who had undertaken the erection of a factory, and the plumbing work, when finished, was to be measured up. Before the construction of the factory had been completed, and whilst steam pipes, which were a necessary part of the factory, were being put up by means of a scaffolding, a workman of the appellants was employed in measuring up the plumbing work of the factory, and in the course of such employment sustained injuries:—*Held,* that the measuring up of the plumbing work was part of the work of constructing the factory, and consequently that the workman sustained injuries arising out of and in the course of his employment on, in, or about a building, which was being constructed by means of a

scaffolding, within the meaning of the Workmen's Compensation Act, 1897, and was entitled to compensation. Frid *vs* Fenton (69 L. J. Q. B. 436) applied; Plant *vs* Wright & Co., 74 L. J. K. B. 331; (1905) 1 K. B. 353; 92 L. T. 720; 53 W. R. 358.—C. A.

Factories, Manufactories, Workshops.

211. It is difficult to say in what a factory differs from a manufactory, except that, according to some, factories are places where articles of commerce are made by means of machinery, while manufactories indicate those establishments where manual labor is used principally, for the transmutation of raw materials into commercial goods. 2 B.-L. & W. 1741.

212. The following have been held to be manufactories within the meaning of the word in the French Act:

A cooperage; D. P. 1900, 4, 18, no. 7;
A carriage factory; D. P. 1900, 4, 72, no. 10;
A carriage-painting establishment; D. P. 1900, 4, 72, no. 9;
A lace-maker's shop, where lace was made by hand; D. P. 1900, 4, 71, no. 5;
A fish-drying establishment; D. P. 1900, 4, 72, no. 17;
A box factory, D. P. 1900, 4, 71, no. 6.

213. But a tailor shop, Cons. préf., Gironde, 9 nov. 1900. D. P. 1901, 3, 69;

214. A dressmaker's establishment, D. P. 1901, 3, 69; Contra: D. P. 1900, 4, 71;

215. A milliner's shop, D. P. 1901, 3, 69; D. P. 1902, 3, 17; D. P. 1903, 5, 534;

216. A printing office where only hand-presses were used, D. P. 1902, 3, 49;

217. A watchmaker's shop where two workmen only were employed to repair watches and jewellery, D. P. 1903, 5, 534;

218. An establishment for making artificial flowers, D. P. 1901, 3, 69; 1902, 3, 17,

were not deemed to be manufactories within the meaning of the Act.

219. A horse shoeing shop is not a workshop. Trib. civ., Seine, 4 oct. 1900; Aix, 17 nov. 1900; Trib. civ. Seine, 2 fév. 1901, D. P. 1902, 2, 68; Bourges, 4 juin 1901, D. P. 1903, 2, 307; Nîmes, 19 juin 1901, D. P. 1902, 2, 68; Besançon, 11 déc. 1901, D. P. 1903, 2, 307.

Unless by reason of the extent of the tools used and the number of men employed it might be considered a manufactory, especially if the horse shoer is also a blacksmith and a locksmith. Angers, 13 mars 1901, D. P. 1903, 2, 307; Besançon, 11 déc. 1901, *ibid.*

220. The Court of Appeals reversed a decision by which it was held that a horse shoer did not come within the meaning of the Act because only three or four men were employed therein and no inanimate motive power and no explosives were made use of there. Civ., 5 juil. 1904, (2e arrêt), D. P. 1904, 1, 553.

Stone, wood or coal yards.

221. The stone yards mentioned in the Act are evidently those establishments where the stone is cut and dressed for building and industrial purposes.

222. Wood yards are those enclosures wherein wood is cut, sawn and prepared for domestic purposes, and where inanimate motive power is frequently used. D. P. 1902, 3, 18; D. P. 1903, 5, 134; Compare D. P. 1902, 3, 49.

223. A lumber yard where lumber is piled for the purpose of drying and being subsequently shipped would not be considered a wood yard within the meaning of the Act. Civ. c. 27 oct. 1903, D. P. 1904, 1, 73; Civ. c., 25 nov. 1903, D. P. *ibid.;* D. P. 1901, 3, 69; Civ. r., 4 août 1903, D. P. 1904, 1, 46; Civ. c., 26 oct. 1903, D. P. *ibid; Contrà,* D. P. 1900, 4, 18, no. 8.

224. Coal yards are evidently those where coal is stored for sale and future delivery.

225. It is difficult to understand the reason of including coal yards among other classes of employment which are more or less dangerous by reason of the machinery or the nature of the work carried on therein. Civ. c., 27 oct. 1903, D. P. 1904, 1, 73.

226. Shanties or chantiers where men engaged in lumbering operations during the winter season, are housed and fed, cannot be said to be included in any of the classes enumerated in the statute. They are not manufactories. Pardee's Appeal, 100 Pa. St. 408. See also, Redgrave *vs* Lee, L. R. 9, Q. B. 363; Kent *vs* Astley, L. R. 5, Q. B. 24; Reddin *vs* Metropolitan Board of Works, 4 De G. F. & J., 532.

Transportation business by land or water.

227. All modes of transportation by land or water for profit are comprised in this designation, excepting navigation by means of sails, and including tramways, omnibuses, stage

coaches, cabs, express wagons, ships and other vessels moved by steam, electricity or even oars, railways.

Companies incorporated for the floating of logs and lumber down stream fall under the Act.

It does not matter whether the motive power used is animate or inanimate, where the business is carried on for a profit.

D. P. 1900, 4, 18, no. 9; Req. 6 juil. 1903, D. P. 1903, 1, 553; D. P. 1905, 1, 225; Req. 23 juin 1903, D. P. 1904, 1, 139; Civ. c., 31 janv. 1905, D. P. 1905, 1, 225; Loubat, nos. 148, 168; 2 B.-L. & W. 1746.

228. It must not be forgotten, however, that the second paragraph of this section excludes navigation by means of sails from the effects of the Act.

229. Neither does it matter whether the transportation business is the principal business of the employer, or merely an accessory to his other business, according to some decisions and authorities. Dijon, 20 juin 1902, D. P. 1903, 2, 439; D. P. 1900, 4, 18, no. 8-9; D. P. 1900, 4, 72, no. 13, 2 B.-L. & W. 1747.

230. A contrary view was held in the following cases. Cons. préf., l'Yonne, 15 fév. 1901, 3, 69; Chambéry, 17 juin 1903, D. P. 1904, 2, 71; Sachet, no. 108; Loubat, no. 145.

231. The fact of a trader keeping a horse and vehicle to deliver his goods would not be sufficient to class him with forwarders. Thus, a baker having a delivery wagon with which to distribute his bread does not belong to the category of persons intended to be classed under this head. Trib. civ. Montauban, 7 déc. 1900, D. P. 1903, 2, 419; Poitiers, 21 jan. 1901, D. P. *ibid.*; Trib. civ. de Saint-Calais, 23 mai 1902, D. P. *ibid.*

232. But the former rule would hold if the carriage of the goods was effected by inanimate power, an automobile, etc. D. P. 1900, 4, 19, no. 12; 2 B.-L. & W. 1747.

233. The business of undertakers is not classed under this head. Trib. Seine, 30 mars 1901; J. Le Droit, 8 mai 1901; Mon. jud. Lyon, 6 août 1901.

Loading or unloading.

234. The statute evidently refers to the loading or unloading of ships when followed up as a regular business by stevedores, etc. Loubat, no. 195; 1 Sachet, no. 139; 2 B.-L. & W. 1752.

235. But the expression used in the Act would cover unloading in connection with railway cars. 2 B.-L. & W. 1752.

236. But the owner of a vessel navigated by means of sails would not come within the Act because of the fact that he employed the crew of his vessel to load or unload it at the wharf. Civ. c. 5 juil. 1904, D. P. 1904, 1, 553.

Gas or electrical business.

237. The French Act evidently includes those classes among the industrial enterprises in which explosives are manufactured or made use of. Loubat, no. 213.

Building of railways, sewers, etc.

238. These are included in the French Act under the general head of "chantier". D. P., 1900, 4, 18, no. 8; Loubat, no. 134; 1 Sachet, no. 116.

239. The word "docks" is omitted from the English text, after the word "wharves".

240. A floating structure carrying cranes for loading and unloading ships was moored in the river Thames 500 feet from the shore by chains fastened to piles driven into the bed of the river. There was no connection with the shore except by boats:—*Held,* that the structure was a "wharf" within the meaning of section 23 of the Factory and Workshop Act, 1895, and section 7 of the Workman's Compensation Act, 1897. Ellis *vs* Cory, 71 L. J. K. B., 72; (1902) 1 K. B. 38; 85 L. T. 499; 50 W. R. 131; 66 J. P. 116.—C. A.

Mines or quarries.

241. For a definition of these words, see R. S. Q., 2098.

Industrial enterprises in which explosives are manufactured or prepared.

242. As already pointed out the French version has reference to establishments where explosives are manufactured or made use of as ingredients in the manufacture of other articles of commerce. The English version requires correction.

243. The establishments intended to be covered are those which cannot be classified as factories, manufactories or workshops, but in which explosives are made use of or manufactured. Loubat, no. 212.

244. The use of explosives such as acetylene gas for lighting of a factory is not covered by the class under consideration. Fuzier-Herman, Répert. vo. Responsabilité, no. 1559.

245. Alcohol cannot be classed as an explosive. S. & P. Lois Ann. 1900, p. 1148.

246. An amendment with a view of adding poisonous substances to explosives, was rejected by the French legislature. Oct. 28 1897, Fuz.-H. Rép., vo. Responsabilité, no. 1564.

Machinery moved by inanimate power.

247. Any mechanical or elementary power such as steam, gas or electricity, wind, water, is covered by this paragraph. Loubat, no. 216, 2 B.-L. & W. 1762.

248. So a wholesale wine merchant would be subject to the Act if he made use of an electric motor for decanting or filling his casks. Chambré, 17 juin 1903, D. P. 1904, 2, 71.

249. So also the proprietor of a bathing house where a steam engine is made use of. D. P. 1900, 4, 71, no. 3.

250. So also the merchant who for the purpose of his business makes use of an automobile. D. P. 1900, 4, 19, no. 12.

251. But the accident must arise from the use made of the inanimate motor power. D. P. 1900, 4, 71, no. 3. Conf. Req. 15 déc. 1902, D. P. 1903, 1, 178; Civ. r. 24 déc. 1902, D. P. *ibid.*; Req. 8 fév. 1904, D. P. 1905, 1, 468.

Agricultural industries.

252. The exemption made in favor of agriculture would scarcely cover an accident arising from the use of inanimate motor power or explosives in connection with the farm, such as steam threshers, steam plows, electric wagons, auto-

waggons, etc. The French Act is explicit on the subject. D. P. 1903, 1, 178, note 1-6; Req. 8 mai 1901, D. P. 1901, 1, 272; D. P. 1902, 3, 49; D. P. 1903, 5, 534; D. P. 1907, 1, 257, note 1-9; Req. 15 déc. 1902, Civ. r., 24 déc. 1902, D. P. 1903, 1, 178; Req. 5 jan. 1903, D. P. 1904, 1, 516; Civ. r. 6 jan. 1903, D. P. 1903, 1, 178; Req. 8 fév. 1904, D. P. 1905, 1, 468; Poitiers, 16 juil 1900, D. P. 1902, 2, 36; Civ. c. 1905, D. P. 1907, 1, 257; Civ. r. 7 août 1906, D. P. *ibid.;* Civ. c. 8 juil. 1903, D. P. 1903, 1, 510; 1 Sachet, 934. See, Ante, 251.

253. The statute does not apply to the case of a farm hand who was at work throwing down grain from the mow of the barn to the feeder of a steam thresher, and who fell and was killed, the machine being in no way connected with the accident. Caen, 31 juil. 1900, D. P. 1902, 2, 36; et sur pourvoi, Civ. r. 5 fév. 1902, D. P. 1902, 1, 231-2; Trib, civ. Les Andelys, 19 mars 1901, D. P. 1902, 2, 36; Req. 15 déc. 1902, D. P. 1903, 1, 178; Riom, 3 déc. 1900, D. P. 1901, 2, 61, et sur pourvoi, Civ. r. 24 déc. 1902, D. P. 1903, 1, 178.

254. Nor to the case of a farm hand at work removing the straw as it came from the thresher, away from the machine, who was injured by the pitchfork of one of the other workmen. Rennes, 26 juil. 1900, D. P. 1902, 2, 36; Trib. civ. Saint-Calais, 25 juin 1900, D. P. 1902, 2, 36; Poitiers, 4 mars 1901, D. P. *ibid.;* Limoges, 13 fév. 1900, D. P. 1900, 2, 88.

255. The ordinary farm hand who is hired to do general work on the farm, and who is injured, may claim the benefit of the Act, if the injury results from the use of inanimate motive power. Civ. r. 1903, D. P. 1903, 1, 178.

256. A farmer does not come within the effects of the Act because he has hired some workmen to take some sand away

from a quarry on his farm. Civ., 29 déc. 1908, D. P. 1909, 1, 510.

257. The contrary was held in a case where a farmer hired some men to dig a well for him on his farm, and supplied them with the necessary tools and explosives for the purpose, paying them daily wages, notwithstanding the fact that they carried on the work in their own way. Req., 8 jan. 1907, D. P. 1909, 1, 423.

Remarks.

258. The question whether the enumeration of employments in the Act is limitative or exhaustive can scarcely arise here. The French writers seem to favor the restricting of the cases to which the law applies to those specifically mentioned in the statute, for the reason that it is an innovation upon the common law, and the same reason would apply in this Province. Trib. civ. Lyon, 8 déc. 1900, D. P. 1902, 2, 330; Civ. c., 2 août 1905; Civ. c., 3 août 1905, D. P. 1907, 1, 85.

259. The terms used in the Act are so comprehensive that it is not probable that any difficulty on this subject will arise. Dijon, 20 juin 1902, D. P. 1903, 2, 439.

260. An employer will not be held to have subjected himself to the statute because he may have paid of his own free will a weekly sum to a workman who was injured. Dijon, 10 déc. 1902, D. P. 1904, 2, 291; Paris, 30 jan. 1904 (sous Civ. c. 3 août 1905), D. P. 1907, 1, 85;

261. Or because he may have assured his workman against accidents. Chambéry, 17 juin 1903, D. P. 1904, 2, 71.

No one to whom the statute does not apply can by his mere consent be made subject to it. Besançon, 2 juil. 1902, D. P. 1906, 2, 404.

262. Consequently, the question whether the case falls within the statute or not must be decided by the courts independently of any admission or consent of the parties. Besançon, 2 juil. 1902, D. P. 1906, 2, 404.

263. If the business comes within the Act, it matters not whether it is carried on extensively or not, or whether it is dangerous or otherwise. D. P. 1904, 1, 45, note 1-5; Civ. c., 3 août 1903, D. P. 1904, 1, 45; Civ. c., 5 juil. 1904 (6 arrêts), D. P. 1904, 1, 553; *Contrà*: Trib. civ. de Coutances, 12 avril 1900, D. P. 1902, 2, 68; Aix, 17 nov. 1900, D. P. *ibid.*; Bourges, 4 juin 1901, D. P. 1903, 2, 307; Nîmes, 19 juin 1901, D. P. 1902, 2, 68; Besançon, 11 déc. 1901, D. P. 1903, 2, 307; Civ. c., 25 oct. 1904, D. P. 1906, 1, 46; Civ. c., 2 août 1905, D. P. 1907, 1, 85; Civ. c., 3 août 1905, D. P. *ibid.*

264. The statute does not apply to the case of workmen who usually work alone, and not in collaboration with others. Section 17; 2 B.-L. & W. 1769.

265. The exclusion from the effects of the statute of accidents arising out of or in the course of navigation by means of sails modifies that part of the section which treats of transportation business, and to which reference has been made.

ARTICLE 2.

2. In cases to which article 1 of this act applies, the person injured is entitled:

a. In case of absolute and permanent incapacity, to a rent equal to fifty per cent. of his yearly wages, reckoning from the day the accident took place, or from that upon which by agreement of the parties or by final judgment it is established that the incapacity has shown itself to be permanent;

b. In case of permanent and partial incapacity, to a rent equal to half the sum by which his wages have been reduced in consequence of the accident;

c. For temporary incapacity to compensation equal to one half the daily wages received at the time of the accident, if the inability to work has lasted more than seven days, and beginning on the eighth day.

The capital of the rents, shall not, however, in any case except in the case mentioned in article 5, exceed two thousand dollars.

2. Dans les cas prévus par l'article 1 de la présente loi, la victime a droit:

a. Pour l'incapacité absolue et permanente, à une rente égale à cinquante pour cent de son salaire annuel, à compter du jour de l'accident ou de celui où, soit par l'accord des parties, soit par le jugement définitif, il est constaté que l'incapacité présente le caractère de la permanence;

b. Pour l'incapacité partielle et permanente, à une rente égale à la moitié de la réduction que l'accident fait subir au salaire;

c. Pour l'incapacité temporaire, à une indemnité égale à la moitié du salaire journalier touché au moment de l'accident, si l'incapacité de travail a duré plus de sept jours et à partir du huitième jour.

Le capital des rentes ne doit cependant, dans aucun cas, sauf celui mentionné à l'article 5, excéder deux mille piastres.

This section is based on art. 3 of the French Act, and treats of two classes of incapacity resulting from accidents, temporary and permanent. This latter class is subdivided into absolute and partial incapacity. Cases resulting in death are dealt with in the following section.

Where the inability to work does not last seven days, the statute does not apply.

Absolute incapacity.

266. Absolute and permanent incapacity means a total disability to earn a livelihood at any employment of any kind or description. 1 Cyc, 270; 2 Bacon 395A; Besançon, 28 fév. 1900, D. P. 1900, 1, 228; Trib. civ., Versailles, 11 jan. 1900, D. P. 1900, 2, 81; Loubat, no. 855; 1 Sachet, no. 526.

267. The loss of both arms has been held to constitute an absolute and permanent incapacity. 1 Sachet, no. 526.

268. Even the loss of the right arm at the shoulder. Trib. civ., Versailles, 11 jan. 1900, D. P. 1900, 2, 81.

269. But the loss of both legs has been held not to constitute absolute and permanent incapacity, inasmuch as the victim, assisted by artificial limbs, may be enabled to do some work, especially as his general health was not affected. Dijon, 10 mars 1902, D. P. 1904, 2, 294.

270. Complete blindness constitutes an absolute and permanent incapacity. Riom, 4 avril 1900, D. P. 1901, 2, 178; Paris, 16 fév. 1901, D. P. 1901, 2, 457; Lyon, 27 mars 1901, D. P. *ibid.*

271. Or the loss of one eye accompanied by an almost complete suppression of the power of the other eye, owing to sympathetic ophthmalia. Douai, 7 août 1900, D. P. 1901, 2, 85.

272. Or, such a loss of sight as results in barring the victim from doing any lucrative work. Trib. civ. Cherbourg, 11 fév. 1901, D. P. 1901, 2, 457; Montpellier, 22 mars 1901, D. P. *ibid.*

273. Where from the effects of a fall on the head, the workman suffered an affection of the brain, which caused continued stupor with obtusion of the intellectual faculties, to such an extent that he had to be interned in an asylum, it was held that his incapacity was permanent and absolute. Trib. civ., Nancy, 12 déc. 1899, D. P. 1900, 2, 81.

274. The fact that prior to the accident the victim was threatened with partial incapacity because of a predisposition to varix is immaterial. Civ. c., 31 juil. 1906, D. P. 1908, 1, 241.

275. According to some decisions, if the employee was partially disabled before the accident, and was absolutely and permanently incapacitated by the accident, his case should be treated as one of total disability. The prevailing doctrine in France is now that his previous state of health is not a factor to be considered in determining the nature of the indemnity. Thus the loss of a remaining eye to one already blind of one eye, constitutes absolute and permanent incapacity. D. P. 1901, 2, 457, note 12-16; Besançon, 11 juil. 1900, D. P. 1900, 2, 457; Req., 30 juin 1903, D.P. 1903, 1, 532; Civ. c., 18 juil. 1905, D. P. 1905, 1, 468; Civ. r., 1 déc. 1908, D. P. 1909, 1 229; Req., 12 avril 1907, D. P. 1908, 1, 241.

276. A miner, whose right eye was sound, but whose left eye was affected by disease, was able to work underground. In the course of his employment he met with an accident to is sound eye, which so injured it as to render it of little use. Owing to the condition of the diseased eye he was thereafter

unable to resume his work underground. It was proved that the condition of the diseased eye was neither caused nor aggravated by the accident:—*Held,* that the workman was suffering from incapacity resulting from the accident. Lee *vs* Baird (1908), S. C. 905.—Ct. of Sess.; Trib. civ. de la Seine, 2 juin 1900, D. P. 1901, 2, 457; Trib. civ. de Cherbourg, 11 fév. 1901, D. P. *ibid.;* Montpellier, 22 mars 1901, D. P. *ibid.;* Lyon, 27 mars 1901, D. P. *ibid.*; Civ. c. 23 juil. 1902, D. P. 1903, 1, 14; Civ. r., 10 déc. 1902, D. P. *ibid.*; Civ. c. 11 nov. 1903, D. P. 1904, 1, 73-74; Civ. c., 18 juil. 1905, D. P. 1908, 1, 241.

277. The court may, in its discretion, grant a provisional allowance pending the suit brought for the recovery of the indemnity. Section 23.

278. The right which exists under the French Act to a temporary compensation similar to that allowed under subsection (*c*) in cases of permanent incapacity, is not granted by our statute.

279. As the rent may be reckoned from the date of the accident, it is evident that any payments made on account of this provisional allowance, should in such a case be deducted from the first instalments of the yearly rent.

280. The rent is fixed by the statute at a sum equal to one-half the victim's yearly wages.

281. Sections 6, 7 and 8 lay down the rules for the calculation of the annual wages upon which the rent is to be based.

282. The victim is obliged to submit to medical treatment. Trib. civ., Narbonne, 17 juil. 1900, D. P. 1901, 2, 307.

283. In case of his refusal to do so, the courts in France have the power to reduce the amount of the rent, especially where his obstinacy has increased his inability to work. Rennes, 10 déc. 1901, D. P. 1902, 2, 229.

There is little doubt that under our statute, the court would have the right to suspend its judgment until the workman had shewn himself amenable to reason.

284. The employer may compel the workman to submit to a medical examination. Section 18.

285. The rent is reckoned from the date of the accident, where it is evident from the state of the victim that his absolute incapacity exists from the outset. In other cases, it is reckoned from the day upon which the parties agree or the court decides that the permanency of the incapacity was made manifest.

286. The workman cannot claim a capital sum in lieu of a rent. Trib. civ., Blois, 21 mars 1900, D. P. 1900, 2, 449.

287. Neither can he claim anything for the price of artificial limbs or appliances rendered necessary to him by the accident. Dijon, 10 mars 1902, D. P. 1904, 2, 294; 1 Sachet, no. 611 .

288. Preexisting disease or infirmity should not be taken into consideration in calculating the amount of the rent. D. P. 1901, 2, 457, note 12-16; Besançon, 11 juil. 1900, D. P. 1900, 1905, D. P. 1905, 1, 468; Civ. r., 1 déc. 1908, D. P. 1909, 1, 229.

289. Under section 5, the rent may be increased or diminished in case of inexcusable fault on the part of the employer or of the employee.

290. The rent is payable quarterly under section 10.

291. It is unalienable and exempt from seizure, under section 12.

292. It is secured in the manner provided by section 20.

293. The employer has a right to deduct from the indemnity any sum due to him by the workman, under section 12.

294. Monies paid by mutual benefit societies or insurance companies are applied to the reduction of the rent payable, in accordance with section 16.

295. Section 14 gives a recourse to the victim against the persons who are responsible for the accident other than the employer, his servants and his agents.

296. The Act does not apply in cases where the yearly wages of the victim exceed $1,000. Section 6.

297. The capital of the rent can, in no case, exceed $2,000, unless the court increases it beyond that sum where the inexcusable fault of the employer is the cause of the accident.

Partial incapacity.

298. Permanent and partial incapacity is a diminution in the victim's capacity to work, and as a consequence, in his wage-earning power. D. P. 1900, 2, 81, note 1-2; Trib. civ., Nancy, 11 déc. 1899, D. P. 1900, 2, 81; Trib. civ., Orléans, 14 fév. 1900, D. P. 1900, 2, 230; Trib. civ., Seine, 13 jan. 1900, D. P. 1900, 2, 81.

299. It differs from absolute incapacity in the fact that the wage-earning capacity of the victim is diminished only, without being completely destroyed.

300. Its chief characteristic is that it results in the amount of wages the workman is able to earn being reduced.

301. An incapacity equal to only 2 or even 5 per cent., can have no appreciable effect on a workman's earning power, and constitutes a mere inconvenience. It can confer no right to an indemnity in the shape of a rent. Trib. civ., Lyon, 24 oct. 1905; Trib. civ., Lille, 16 jan. 1904, 4 juin, 1908, D. P. 1909, 5, 75; Besançon, 15 avril 1908; Chambery, 10 fév. 1909; Douai, 1 mars, 5 avril 1909; Trib. civ., Seine, 8 mars 1909 ; Trib. civ., Lille, 30 juil. 1908, D. P. 1909, 2, 363.

302. Although the inability to work at his own trade or calling is manifestly total, it will be held to be only partial if the victim is enabled by the aid of artificial limbs or appliances to make use of his two arms, and to do some kinds of work. Req., 18 janv. 1905, D. P. 1909, 1, 108.

303. The loss of several teeth will not, as a rule, be held to entail a permanent partial incapacity. Trib. de la paix, Courbevoie, 8 mai 1900, D. P. 1902, 2, 68; 1 Sachet, no. 534.

304. A scar on the face which might be a permanent disability for a footman, would not be deemed to affect an ordinary laborer in the same way. 1 Sachet, no. 534.

305. The loss of a teamster's right arm, or the fracture of his shoulder blade followed by ankylosis of the left arm, has been held to constitute a partial and permanent incapacity. Trib. civ., Mayenne, 23 mars 1900, D. P. 1901, 2, 275; Lyon, 1 avril 1901, D. P. 1902, 2, 330; Trib. civ., Narbonne, 13 fév. 1900, D. P. 1901, 2, 82.

306. And so was the loss of the left hand. Besançon, 28 fév. 1900, D. P. 1900, 1, 227.

307. The loss of the right hand. Dijon, 2 avril 1900, D. P. 1900, 2, 253.

308. The mutilation of the right hand. Trib civ., Lille, 28 déc. 1899; Trib. civ., Beauvais, 11 janv. 1900, D. P. 1900, 2, 85.

309. The loss of four fingers from the left hand. Trib. civ., Douai, 21 fév. 1900, D. P. 1900, 2, 454.

310. The loss of three fingers from the right hand. Trib. civ., Saint-Quentin, 5 janv. 1900; Montpellier, 6 mars 1900, D. P. 1900, 2, 449.

311. The loss of three fingers from the left hand. Trib. civ., Angers, 12 déc. 1899, D. P. 1900, 2, 67; Trib. civ., Neufchâteau, 23 nov. 1899, D. P. 1900, 2, 85.

312. The loss of two fingers from the right hand. Douai, 18 janv. 1900, D. P. 1900, 2, 117; Trib. civ., Lorient, 29 mai 1900, D. P. 1900, 2, 449.

313. Or from the left hand. Trib. civ., Montluçon, 18 mai 1900, D. P. 1902, 2, 449; Nancy, 9 mars 1900, D. P. 1900, 2, 230.

314. The loss or disabling of one finger on the right hand. Aix, 25 mai 1900, D. P. 1900, 2, 449; Trib. civ., Seine, 26 mars 1900, D. P. 1900, 2, 230;

315. Or of one finger on the left hand. Trib. civ., Blois, 21 mars 1900, D. P. 1900, 5, 449; Trib. civ., Lyon, 21 mars 1900, D. P. *ibid.*

316. Ankylosis or atrophy of one finger of the left hand of a miner. Dijon, 3 juil. 1900, D. P. 1901, 2, 81;

317. Ankylosis of the left thumb of a navvy. Trib. civ., Seine, 13 janv. 1900, D. P. 1900, 2, 81;

318. The loss of an eye of a skilled workman. Trib. civ., Orléans, 14 fév. 1900, D. P. 1900, 2, 230; in appeal, Orléans, 30 mai 1900, D. P. 1900, 2, 449; Douai, 26 fév. 1900, D. P. 1900, 2, 197; Trib. civ., Soissons, 28 nov. 1900, D. P. 1902, 2, 36; Besançon, 11 juil. 1900, D. P. 1901, 2, 457;

319. Hernia when it causes partial incapacity to work only. Limoges, 26 avril 1901; Grenoble, 16 avril 1901, D. P. 1902, 2, 435.

320. What has been said already concerning medical examination and treatment under the heading of absolute and permanent incapacity, applies equally to partial permanent incapacity.

Temporary indemnity.

321. I would refer to the remarks under this head to be found in preceding paragraphs concerning absolute incapacity.

322. This provisional allowance should continue to be paid until the permanent nature of the incapacity to work is determined, under section 9.

323. The statute fixes the rent at one-half the sum by which the workman's wages have been reduced in consequence of the accident.

324. The courts have an absolute discretion in appreciating the wage-earning capacity of the victim after the accident.

325. The workman will not be allowed anything for the price of artificial limbs which he has purchased and which had become a necessity to him, even if his incapacity, instead of being partial, would be absolute without them. Dijon, 10 mars 1902, D. P. 1904, 2, 294; Civ. c., 25 juin 1902, D. P. 1902, 1, 341 ; Toulouse, 8 juil. 1903, D. P. 1904, 2, 294 ; 1 Sachet, no. 611.

326. The statute does not say when the rent begins, as it does in the case of absolute incapacity, although it says when it shall be paid. In France, it is held to be due from the time when the workman regained his wage-earning powers, and this view has been adopted by an amendment to the Act there. D. P. 1900, 2, 81, note 6-8; Trib. civ. de Nancy, 11 déc. 1899, D. P. 1900, 2, 81; Angers, 16 janv. 1900, D. P. 1900, 2, 117; Besançon, 14 fév. 1900, D. P. *ibid.;* Besançon, 28 fév. 1900, D. P. 1900, 2, 227; Douai, 19 mars 1900, D. P. *ibid.;* Trib. civ. de Lyon, 21 mars 1900, D. P. 1900, 2, 449; Trib. civ. de la Seine, 26 mars 1900, D. P. 1900, 2, 230; Rouen, 11 mai 1900, D. P. 1901, 2, 178; Orléans, 30 mai 1900, D. P. 1900, 2, 449; Besançon, 8 août 1900, D. P. 1901, 2, 178; Dijon, 3 juil. 1900, D. P. 1901, 2, 250; Trib. civ. de Lyon, 30 nov. 1900, D. P. 1901, 2, 178; Trib. civ. de Toulouse, 28 déc. 1900, D. P. 1901, 2, 176; Civ. c., 7 janv. 1902, D. P. 1902, 1, 339; Req., 24 fév. 1902, avec le rapport de M. le conseiller Alphandéry, D. P. 1902, 1, 339-340; Req., 24 fév. 1902, D. P. 1903, 1, 278; Dijon, 10 mars 1902, D. P. 1904, 2, 294; Civ. c., 25 juin 1902, D. P. 1902, 1, 341; Civ. c., 19 janv. 1903, D. P. 1903, 1, 108; Civ. c., 17 fév. 1903, D. P. 1903, 1, 109; Pau, 27 mars 1903, D. P. 1904, 2, 358; Toulouse, 8 juil. 1903, D. P. 1904, 2, 294; Civ. c., 25 nov. 1903, D. P. 1904, 1, 73-75.

327. The proper way to ascertain the loss incurred in case of permanent and partial incapacity, is to compare the wages

earned before the accident with the wages which the victim has been paid since. If the wages remain the same, no right to a rent exists.

328. On the other hand, it has been held that it is not the wages earned which should be considered, but the wage-earning capacity.

329. For the first system, Trib. civ., Toulon, 23 janv. 1900, D. P. 1900, 2, 297; Nancy, 9 mars 1900, D. P. 1900, 2, 230; Trib. civ., Montluçon, 18 mai 1900, D. P. 1900, 2, 449; Civ., 1 déc. 1908, D. P. 1909, 1, 229;

For the second, D. P. 1900, 2, 230, note 2-4; Trib. civ., Lille, 28 déc. 1899; Trib. civ., Saint-Quentin, 5 janv. 1900, D. P. 1900, 2, 85; Trib. civ., Douai, 21 fév. 1900, D. P. 1900, 2, 454; Douai, 18 janv. 1900, D. P. 1900, 2, 227; Douai, 19 mars 1900; Besançon, 28 fév. 1900, D. P. 1900, 2, 227; Dijon, 2 avril 1900, D. P. 1900, 2, 253; Lyon, 26 déc. 1900, D. P. 1901, 2, 373; Trib. civ., Verdun, 13 nov. 1900; Paris, 5 janv. 1901, D. P. 1901, 2, 373; Chambéry, 19 nov. 1900, D. P. 1902, 2, 85; Lyon, 8 mai 1901; Trib. civ., Seine, 9 juil. 1900, D. P. 1902, 2, 366; Civ. c., 26 nov. 1901, D. P. 1901, 1, 552; Civ. c., 7 janv. 1902, D. P. 1902, 1, 339; Req., 13 janv. 1902, D. P. 1902, 1, 404; Civ. r., 19 janv. 1903, D. P. 1903, 1, 108; Aix, 3 août 1900; Lyon, 4 août 1900, D. P. 1901, 2, 373.

Even though the employer offers to take the workman back at the same wages he earned before the accident, a rent will be granted. Montpellier, 6 mars 1900; Aix, 25 mai 1900; Orléans, 30 mai 1900; Trib. civ., Lorient, 29 mai 1900, D. P. 1900, 2, 449; Douai, 31 oct. 1900, D. P. 1901, 2, 373; Grenoble, 5 nov. 1900; Bordeaux, 19 mars 1901, D. P. 1902, 2, 366.

330. And even though the workman has already gone back to work at the same wages he had before the accident. Trib.

civ., Blois, 21 mars 1900; Trib. civ., Lyon, 21 mars 1900, D. P. 1900, 5, 451; Lyon, 4 août 1900; Paris, 5 janv. 1901, D. P. 1901, 2, 373; Bordeaux, 19 mars 1901, D. P. 1902, 2, 366.

331. Or even at higher wages. Trib. civ., Verdun, 13 avril 1900, D. P. 1901, 2, 373; Trib. civ., Seine, 7 juil. 1900, D. P. 1902, 2, 366.

332. While a comparison between the rate of wages earned before and those earned after the accident, is an element in arriving at the rent to be granted, it is not the only element. Same authorities.

333. And a rent greater in proportion than the diminution of wages suffered by the victim, may be granted. Trib. civ., Douai, 21 fév. 1900, D. P. 1900 ,2, 454.

334. A workman obtained a decree under the Workmen's Compensation Act, 1897, awarding him 17s. per week compensation "until further orders of the Court." Thereafter he accepted employment with the same employers and was paid 34s. per week, being the same wages as before the accident, and continued to be so employed and paid for a considerable period, during which no payments under the decree were made, and no steps under the Act were taken by the employers to have the decree for weekly payments reviewed or terminated. Having left their employment, the workman sought to enforce the weekly payments decreed for from the date of the decree:—*Held,* that the workman was not entitled to payment under the decree for the time he was earning full wages. Beath & Keay *vs* Ness, 6 F. 168.—Ct. of Sess.

335. The remarks already made as to the method of calculating the rent, the cases in which it may be increased or

diminished or suspended, the manner and time of payment, and the security provided for such payment, its exemption from seizure, etc., under the heading of absolute incapacity, apply to partial incapacity as well.

Temporary incapacity.

336. Temporary incapacity results from an injury which is followed by a complete cure after a more or less prolonged period of time, and which causes a transient suspension of the wage-earning faculties of the person injured during a term exceeding seven days. D. P. 1900, 2, 81, note 1-5 *in fine*.

337. It entitles the workman to a compensation equal to one-half the daily wages he received at the time of the accident, commencing on the eighth day.

338. By wages is meant the amount actually received by the workman at the time of the accident, and not a fictitious amount arrived at by a system of averages. Req., 3 déc. 1901, D. P. 1902, 1, 381.

339. Where the wages varied every two weeks according to the results of the mining operations carried on and in which the injured person took part, the courts held that the wages paid on the pay-day preceding the accident should form the basis of the indemnity. Dijon, 3 juil. 1900, D. P. 1901, 2, 250.

340. No indemnity is allowed for the first seven days during which the incapacity existed.

341. In France, a number of decisions upheld the doctrine, even before the amendment to art. 3 by the Law of 1905, that a daily wage was due for Sundays and holidays, although the

factory or other enterprise where the injured person had worked was in the habit of closing down and he had never worked on such days; and the amendment of March 31, 1905, has sanctioned this interpretation. D. P. 1901, 1, 161, note 1-2; Dijon, 3 juil. 1900, D. P. 1901, 2, 250; Civ. r., 27 mars 1901, D. P. 1901, 1, 161; Trib. de paix de Saint-Etienne, 27 oct. 1899, D. P. 1900, 2, 73; Trib. de paix de Paris, 1er déc. 1899, D. P. 1900, 2, 73; Trib. de paix de Paris, 6 déc. 1899, D. P. *ibid.;* Trib. de paix de Paris, 24 janv. 1900, D. P. *ibid.;* Dijon, 5 mars 1900, D. P. 1900, 2, 195; Bordeaux, 19 mars 1901, D. P. 1902, 2, 366; Limoges, 26 avril 1901, D. P. 1902, 2, 435; *Contrà*: Trib. de paix de Marseille, 2 sept. 1899, D. P. 1900, 2, 73.

It would be impossible to apply these decisions here in view of the text of our statute, otherwise the injured person would be entitled to be paid one-half the amount of daily wages which he had never received before the accident.

342. This temporary indemnity is due as long as the inability to resume work continues. It cannot be claimed for any part of the time during which the injured person resumed his work transiently at his former wages. Dijon, 3 juil. 1900, D. P. 1901, 2, 250; but see 1 Sachet, 643; or attended to military service for which he received the usual allowance from the state. Trib. civ., Paris, (1er arrêt), 5 déc. 1907; D. P. 1908, 5, 47; *Contrà,* 1 Sachet, 645.

343. The inability to work is held to have ceased when the wound has healed; but this is a question of fact which the court has to decide according to the facts of each case. Besançon, 18 fév. 1900, D. P. 1900, 2, 227; Trib. iv., de Nancy, 12 déc. 1899, D. P. 1900, 8, 81; Trib. civ. de Narbonne, 13 fév. 1900, D. P. 1901, 2, 82; Trib. civ. de Lyon, 21 mars 1900, D. P. 1900, 2, 449; Trib.

civ. de Lorient, 29 mai 1900, D. P. *ibid.;* Bordeaux, 19 mars 1901, D. P. 1902, 2, 366; Douai, 19 mars 1900, D. P. 1900, 2, 227; Besançon, 11 juil. 1900, D. P. 1901, 2, 45; Trib. civ. des Andelys, 19 mars 1901, D. P. 1902, 2, 36.

344. The injured person is bound to submit to a medical examination according to section 18.

345. Payment of the compensation is made at the same time as the wages of the other employees, provided the interval between pay-days does not exceed sixteen days. Comp. Reid *vs* Tremblay, 12 L. N. 203. Section 10.

346. The place of payment is not indicated by the statute, and the usual place of paying the workmen would govern. Civil code, 1152.

347. The compensation is not liable to seizure, and is unalienable under section 12.

348. It seems to have been the opinion of the French authorities that the limitations contained in section 6 were not applicable to the compensation granted for temporary incapacity, and that even if the daily wages of the injured person exceeded six hundred dollars during the year, he would still be entitled to one-half the daily wages received by him; and that the statute would apply to his case were his daily wages in the aggregate greater than the sum of one thousand dollars for one year. Av. com. consult., 17 janv. 1900, D. P. 1900, 4, 19.

ARTICLE 3.

3. When the accident causes death, the compensation shall consist of a sum equal to four times the average yearly wages of the deceased at the time of the accident, and shall in no case, except in the case mentioned in article 5, be less than one thousand dollars or more than two thousand dollars.

There shall further be paid a sum of not more than twenty-five dollars for medical and funeral expenses, unless the deceased was a member of an association bound to provide, and which does provide therefor.

The compensation shall be payable as follows:

a. To the surviving consort not divorced nor separated from bed and board at the time of the death, provided the accident took place after the marriage.

b. To the legitimate children or illegitimate children acknowledged before the accident, to assist them to pro-

3. Lorsque l'accident a causé la mort, l'indemnité comprend une somme égale à quatre fois le salaire moyen annuel du défunt au moment de l'accident, ne devant, dans aucun cas, sauf le cas mentionné à l'article 5, être moindre que mille piastres ni excéder deux mille piastres.

Il est en outre payé une somme n'excédant pas vingt-cinq piastres pour les frais de médecin et de funérailles, à moins que la victime ne soit membre d'une association tenue d'y pourvoir et qui y pourvoit.

L'indemnité est payable de la manière suivante:

a. Au conjoint survivant, non divorcé ni séparé de corps, au moment du décès, pourvu que l'accident ait eu lieu après le mariage;

b. Aux enfants légitimes ou naturels, reconnus avant l'accident, de manière à aider

vide for themselves until they reach the full age of sixteen years.

c. To ascendants of whom the deceased was the only support at the time of the accident.

If the parties do not agree upon the apportionment of the compensation, it shall be apportioned by the proper court. Nevertheless every sum paid under article 2 of this act in respect of the same accident shall be deducted from the total compensation.

à pourvoir à leurs besoins jusqu'à l'âge de seize ans révolus;

c. Aux ascendants dont le défunt était l'unique soutien au moment de l'accident.

A défaut d'accord entre les parties au sujet de la répartition de l'indemnité, elle est faite par le tribunal compétent.

Cependant, toute somme payée en vertu de l'article 2 de la présente loi pour le même accident sera déduite de l'indemnité totale.

This section is based on art. 3 of the French Act.

349. It is the accident which creates the right to the indemnity. The right of the victim's representatives depends on their being conceived or born on the day of the accident. A child conceived before the death of the victim, but after the accident happened, is without remedy under the Act. Civ., 1 août 1906, D. P. 1909, 1, 108.

350. The natural child of a woman who was not recognized by her, although the baptismal register mentioned her as being the mother, and the child possessed the status in accordance with the register, can make no claim under the Act in case of an accident to the woman. Req., 14 déc. 1908, D. P. 1900, 1, 509.

351. In case the accident is not followed immediately by death, the injured party has, during his lifetime, the same rights as are granted by section 2 in cases of incapacity only.

He may sue for a rent under either of the subsections (a) or (b), or for the compensation mentioned in (c); and, in any case, may apply for a provisional allowance under section 23. 1 Sachet, No. 555.

352. If the provisional allowance remain unpaid at the time of his death, his legal representatives, as distinguished from the beneficiaries mentioned in section 3, would be entitled to claim it by suit against the employer. Paris, 31 janv. 1903, (sous Req., 13 janv. 1904), D. P. 1906, 1, 101.

353. Any sum paid under section 2 to the deceased or to his legal representatives, is deducted from the total compensation exigible by the beneficiaries.

354. The compensation is fixed by the statute at a sum equal to four times the average yearly wages of the deceased at the time of the accident, but, except in the case of inexcusable fault, cannot exceed $2,000 or be less than $1,000. This is the only section of the Act which does not determine in a definite manner the amount of indemnity to be paid in ordinary cases; and as it allows the compensation to fluctuate between one thousand and two thousand dollars, it is evident that the parties interested are, notwithstanding the rigorous expressions used in section 19, at liberty to settle the amount between these two extremes by amicable arrangement without the interference of the courts.

355. Even where the average yearly wages are less than $250, the compensation cannot be less than $1,000 in ordinary cases, nor can it exceed $2,000, though four times the yearly wages exceed that sum, the whole subject to section 5, and to the presence of inexcusable fault on the part of the employer or of the employee.

356. A further sum of $25 is allowed, in all cases, where the deceased was not a member of an association bound to provide for medical and funeral expenses, or where such association fails to provide therefor. This sum is intended to cover all the medical and funeral expenses for which the employer is liable.

357. The beneficiaries mentioned in the statute are entitled to claim the compensation mentioned therein notwithstanding the fact that a rent had been granted the victim during his lifetime, if it were made evident that the death which occurred more than two years after the accident was the result of a suicide committed while under the influence of a disease of the brain due to the sufferings resulting from such accident. Req., 25 oct. 1905, D. P. 1907, 1, 330.

358. Especially where the victim had asked for a revision of the judgment fixing the rent during his lifetime. Req., 25 oct. 1907, above cited.

359. No compensation is payable where the employee intentionally brought about the accident. Section 5.

360. The Act does not apply to persons whose wages exceeded $1,000. Section 6.

361. The compensation is payable to the beneficiaries in the proportions agreed upon by themselves, and should they fail to agree, in the proportions fixed by the court.

The French law apportions the shares of the beneficiaries.

362. The parties to be benefitted under this section are the surviving consort who at the time of the death was neither divorced nor separated from bed and board from her consort,

and who was married to him at the time of the accident, (2) the legitimate children and the illegitimate children acknowledged before the accident, and (3) the ascendants of whom the deceased was the sole support at the time of the accident.

363. The widower has the same rights as are granted to the widow, the law making no distinction of sex. Lyon, 7 juin 1900, D. P. 1901, 2, 12.

364. Children who at the time of the death had attained the age of 16 years do not benefit.

365. The child conceived at the time of the accident is entitled to the benefit of the Act provided it is born viable. Trib. civ., Dunkerque, 2 mars 1900, D. P. 1901, 2, 308; Paris, 22 fév. 1901, D. P. *ibid.*

366. The children cease to share in the benefits of the apportionment as they reach the age of sixteen years.

367. Incestuous and adulterine children would not be excluded from the benefits of the Act. Civil code, 768.

368. The apportionment is made once for all, and the rights of the survivors are not increased by the death of any of the beneficiaries, and the attaining of the age of sixteen years by any of the children cannot change the amounts payable to the others.

369. The compensation is payable one month after the parties have agreed upon the amount to be paid, or after the final judgment fixing it. Section 9.

370. The compensation is unalienable and exempt from seizure. Section 12.

371. In England it has been held that the question of whether or not a person is dependent on the deceased's earnings is not affected by the fact that he has inherited money from the deceased, or in any other way, has benefited by the death. Pryce *vs* Penrikyber Navigation Colliery Co., (1902), 1 K. B. 221. There the workman had saved a sum of money, to which the widow became entitled on his death, and it was held that this did not prevent her being wholly dependent upon his earnings.

372. Where the workman was killed before he had ever earned anything, the minimum amount under the Imperial Act was awarded. Leonard *vs* Baird, 3 F. 890. See Doyle *vs* Beattie, 2 F. 1166; Forrester *vs* McCallum, 3 F. 650; Russell *vs* McCluskey, 2 F. 1312.

ARTICLE 4.

4. A foreign workman or his representatives shall not be entitled to the compensation provided by this act, unless at the time of the accident he or they reside in Canada, or if he or they cease to reside there while the rent is being paid; but if he or they cannot take advantage of this act the common law remedy shall exist in his or their favour.

4. Un ouvrier étranger ou ses représentants n'ont droit aux sommes et indemnités prévues par la présente loi que si, au moment de l'accident, ils résident au Canada et continuent à y résider pendant le service de la rente. Mais s'ils ne peuvent se prévaloir de la présente loi, le recours de droit commun existe en leur faveur.

This section is adapted from art. 3, par. 14, of the French Act.

373. A foreign workman is one who does not reside within the limits of the Dominion of Canada.

374. England would be considered as a foreign country under this section. See Bottomley & Lumley, 15 L. C. R. 213, Q. B. 1864.

375. The common law remedy is not given to the foreign workman or to his representatives, unless there is some impediment which prevents them from taking advantage of the Act. For instance, a foreign workman's representatives may have continued to reside out of Canada while he was employed at work here. It would be unreasonable to expect that his wife and children should be obliged to give up their foreign residence before making any claim founded upon his death through accident. The remedy supplied by the Code would inure to them beyond a doubt. But where the workman has received part of the compensation allowed by the Act, he cannot create a new right for himself by moving into a foreign country, even though it be its native land.

376. The right under the Act exists in favor of the workman if he resided in Canada when the accident occurred; and if the right be a continuous right, such as a rent, he must not remove his residence from Canada during the period he continues to exercise it.

377. As to the representatives, the wife, the children and the ascendants mentioned in section 3, they also must have had their residence in Canada at the time of the accident, and must continue their residence here throughout their enjoyment of the rights given them by the Act in order to benefit by its operation.

378. So long as they fulfil the conditions required of them by section 4, the foreign workman and his representatives are entitled to the same rights as are granted to Canadians.

379. By residence is not meant the legal domicile of the party, but the residence resulting from inhabitancy. Trib. civ., Narbonne, 8 nov. 1900, D. P. 1904, 2, 92 ; Trib. civ., Nice, 2 janv. 1901, D. P. 1904, 2, 92-3; Paris, 16 mars 1901, D. P. 1904, 2, 92; Civ. c., 7 juil. 1903, D. P. 1903, 1, 533 ; Trib. civ., Nice, 14 déc. 1903, D. P. 1905, 2, 23.

380. Where notwithstanding an order of expulsion a workman continues to have his abode in France, he is to be considered as residing therein. Trib. civ., Nice, 14 déc. 1903, D. P. 1905, 2, 23.

381. But it is immaterial whether his leaving the country was compulsory or not. Paris, 3 jan. 1903, D. P. 1904, 2, 92-3.

382. In the case of accident followed by death, if the widow resided in Canada, she alone would be entitled to claim the compensation fixed by section 3, although there might be children elsewhere, and ascendants to whom the deceased was a sole support. If these latter were unable to take advantage of the Act, the court in apportioning the share in the compensation to be paid to the widow, would be obliged to take into consideration the amount of indemnity which she would likely recover under the common law, if any.

ARTICLE 5.

5. No compensation shall be granted if the accident was brought about intentionally by the person injured.

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

5. Aucune indemnité n'est accordée dans le cas où l'accident a été intentionnellement provoqué par la victime.

Le tribunal peut diminuer l'indemnité si l'accident est dû à la faute inexcusable de l'ouvrier, ou l'augmenter s'il est dû à la faute inexcusable du patron.

This section is taken from art. 20 of the French Act.

383. The word "intentionally" has been defined as the exercise of intelligent will, the mind being fully aware of the nature and consequences of the act which is about to be done, and with such knowledge and with full liberty of action willing and electing to do it.

384. It has also been defined as the purpose to use a particular means to effect a certain result, of a person who is aware of the nature and the consequences of the act. 22 Cyc. 1456, 1457.

385. An accident is said to have been brought about intentionally when it is the result of a voluntary act committed by the workman for the purpose of bringing about an accident, and thereby creating a right to an indemnity in his

favor, or of a criminal act committed by the workman whether the consequences were or were not foreseen. There must be a criminal act, or an intention or design not only to commit the act, but to have the accident follow. Trib. civ. Château-Thierry, 17 jan. 1900, D. P. 1900, 2, 268; 2 Sachet, no. 1382; 2 B.-L. & W., 1847.

386. It is for the person who alleges that an act was done intentionally to prove it. Conf. D. P. 1900, 2, 197, note 7; Rouen, 28 fév. 1900, D. P. 1900, 2, 197.

387. The intentional fault is a complete bar to any claim made by the workman or by his representatives or beneficiaries under the statute. 2 Sachet, no. 1387. See, *ante*, no. 56.

388. On the other hand, inexcusable fault implies an act of exceptional gravity committed, with a full knowledge of the danger which may ensue, in spite of an imperative order or a rigid prohibition. D. P. 1900, 2, 82, note 4-5; D. P. 1903, 1, 105, note 1-4.

389. In some jurisdictions, the term "wilful negligence" is used to signify a higher degree of neglect than gross neglect, and has been described as an intentional wrong or such a reckless disregard of security and right as to imply bad faith. 29 Cyc. 424.

390. It may consist in the doing or in the omitting to do an act.

It is impossible to define inexcusable fault, but it seems to have a strong analogy to the "wilful negligence" already spoken of. Every case must be judged according to the facts, but the fault must be gross, unpardonable, so grievous that it allows of no excuse: it must be a higher degree of neglect

than gross neglect, and be, as it were akin to fraud. Rouen, 28 fév. 1900, D. P. 1900, 2, 197; Rouen, 13 août 1903, D. P. 1904, 2, 293; 2 B.-L. & W., 1929.

391. Of course, if the inexcusable act committed by the workman were also intentional, he would be barred from asserting any right under the statute by reason of the first paragraph of this section. D. P. 1903, 1, 105.

392. Inexcusable fault essentially implies an element of intention, a wish if not to cause the accident, at all events to do the act by which the accident is brought about. 2 Sachet, 1409.

393. And it implies, also, a knowledge of the risk. 2 Sachet, 1410; Trib. civ. d'Angoulème, 12 mars 1902, et, sur appel, Bordeaux, 24 juin 1902, D. P. 1902, 2, 481.

394. It is a fault which, apart from the question of fraudulent intention, denotes a desire to act or to refrain from acting with a knowledge of imminent danger to follow, and which no reason can explain or justify; it denotes a want of care, an imprudence which is in a way culpable, and approaching wickedness and evil design. Pau, 27 mars 1903, D. P. 1904, 2, 358; Trib. civ., Nantes, 27 nov. 1899, D. P. 1900, 2, 81; Besançon, 28 fév. 1900, D. P. 1900, 2, 227; Trib. civ., Mayenne, 28 mars 1900, D. P. 1901, 2, 275.

395. It is a fault that the party would have avoided if he had not shewn a negligence and want of care almost culpable, and which any one who was not indifferent to his own life and safety and interests, and to the life, safety and interests of others would not have displayed. Trib. civ., Château-Thierry, 17 jan. 1900, D. P. 1900, 2, 268; Trib. civ., Narbonne, D. P. 1900, 2, 82; Chambéry, 13 août, 1902, D. P. 1905, 2, 22.

396. A rash act committed by a workman which is not foolhardy is not necessarily inexcusable. Trib. civ., Neufchâteau, 23 nov. 1899, D. P. 1900, 2, 85; Trib. civ., Rheims, 30 déc. 1904, D. P. 1905, 5, 5; 2 Sachet, no. 1422.

397. A workman employed in a railway yard as a mason, who, notwithstanding a warning, crosses in front of an engine, and, upon his return, crosses in front of another engine without looking about, and is struck by it as it was going out of the yard at a moderate rate of speed, is guilty of inexcusable fault. Req., 2 août 1904, D. P. 1906, 1, 108.

398. A workman who fails to make use of the stick with which he was provided for the purpose of picking out wool that has become entangled in the loom, after many years experience as a weaver, and uses his fingers instead and is injured, is guilty of an inexcusable fault. Trib. civ., Saint-Quentin, 5 janv. 1900, D. P. 1900, 2, 85. But see Besançon, 28 fév. 1900, D. P. 1900, 2, 227.

399. According to some decisions drunkenness is an inexcusable fault. Paris, 24 nov. 1900, D. P. 1901, 2, 60; Trib. civ. Valence, 20 fév. 1900, D. P. 1902, 2, 23; Nancy, 27 mars, 1901, D. P. *ibid.;* Trib. civ., Lille, 18 fév. 1900, D. P. 1902, 2, 23; 2 B.-L. & W., 1929.

400. On the other hand, it has been held that a workman who had gone up on a scaffold while under the influence of liquor and against the warning of his employer, was guilty of an imprudent act but not of an inexcusable fault, especially as there was nothing to connect his intoxicated state with the accident which occurred. Nancy, 20 déc. 1900, D. P. 1902, 2, 23. See also Trib. civ., Mayenne, 23 mars 1900, D. P. 1901, 2, 275.

401. Other instances of inexcusable fault on the part of the workman may be found in the following cases: Rouen, 28 fév. 1900, D. P. 1900, 2, 181; Montpellier, 3 mai 1901, (sous Civ. r., 27 oct. 1903), D. P. 1904, 1, 76; Trib. civ., Lorient, 5 juin 1900, D. P. 1901, 2, 82; Trib. civ., Neufchâteau, 23 nov. 1889, D. P. 1900, 2, 85; Rouen, 13 août 1903, D. P. 1904, 2, 293; Rouen, 28 fév. 1900, D. P. 1900, 2, 197; Trib. civ., Rouen, 22 déc. 1899, D. P. 1900, 1, 197; Rouen, 22 mars 1901, D. P. 1901, 2, 457.

402. Cases of alleged inexcusable fault on the part of the employer are reported from Amiens, 20 mars 1900, D. P. 1900, 2, 268; Trib. civ., Nantes, 27 nov. 1899, D. P. 1900, 2, 81; Pau, 27 mars 1903, D. P. 1904, 2, 358.

403. Where the employer has placed the workman under the control and direction of a foreman, the latter's inexcusable fault will be deemed to be the fault of the employer. Civ. c., 14 mars 1904, D. P. 1904, 1, 553.

404. The conductor of a railway train will be held to bind his employer by his inexcusable fault with regard to an employee. Civ. r., 21 janv. 1903, 1er arrêt, D. P. 1903, 1, 105; 2 Sachet, 1456.

405. The contrary was held in Montpellier, 3 mai 1901, (sous Civ. r., 27 oct. 1903, 2e esp.), D. P. 1904, 1, 76.

See also Trib. civ., Montbrison, 13 avril 1900, D. P. 1900, 2, 478; Lyon, 23 juil. 1900, D. P. 1902, 2, 364; Bordeaux, 24 juin 1902, D. P. 1902, 2, 481.

406. Where the employer's foreman, instead of giving good example, applied a match to a stick of dynamite in the hands of a workman, the employer was held liable to an increased indemnity. Riom, 4 avril 1900, D. P. 1901, 2, 178.

Other cases of inexcusable fault will be found *suprà*, under section 1.

ARTICLE 6.

6. If the yearly wages of the workman exceed six hundred dollars, no more than this sum shall be taken into account. The surplus up to one thousand dollars shall give a right only to one fourth of the compensation aforesaid. This act does not apply in cases where the yearly wages exceed one thousand dollars.

6. Si le salaire annuel de l'ouvrier dépasse six cents piastres, il n'est pris en considération que jusqu'à concurrence de ce montant. Pour le surplus, et jusqu'à mille piastres, il ne donne droit qu'au quart des indemnités susdites. Dans le cas d'un salaire annuel d'au delà de mille piastres la présente loi ne s'applique pas.

This section is adapted from art. 2 of the French Act.

407. Those whose salary exceeds one thousand dollars yearly are not governed by this Act.

408. If the yearly salary exceeds six hundred dollars, a twofold calculation has to be made. The compensation to which the person injured or his beneficiaries are entitled is estimated for the first six hundred dollars according to the rules laid down in section 2 or 3; then the compensation is estimated in a similar manner for the excess of the yearly wages over $600, and the one-fourth of this amount added to the first sum, represents the total compensation. Loubat, 942 ; 1 Sachet, 218; 2 B.-L. & W., 1899.

409. This rule applies to all compensations, whether they consist of a capital sum or of a rent. In France, under the original Act, before its amendment in 1902, it was held that the rule was not applicable to cases of temporary incapacity, but the difference in the text of the French Act from that of our statute forbids the following of that doctrine here. Av. com. consult., 17 janv. 1900, D. P. 1900, 4, 19.

ARTICLE 7.

7. Apprentices are assimilated to the workmen in the business who are paid the lowest wages.	7. Les apprentis sont assimilés aux ouvriers les moins rétribués de l'entreprise.

This section is taken from art. 8 of the French Act.

A definition of an apprentice will be found under section 1, no. 190.

410. It was held in France, under a statute which differs from ours in its wording, that the indemnity payable in the case of an apprentice should be calculated according to the lowest wages paid to workmen in the same class of business, irrespective of the amount of wages actually being earned by himself at the time of the accident. Civ., 26 juil. 1905, (2e espèce), D. P. 1909, 1, 444; Caen, 19 fév. 1906, D. P. 1909, 2, 307; 1 Sachet, 888.

411. The contrary view was adopted in the following cases: Civ. c., 5 juil. 1904, (8e espèce), D. P. 1904 ,1, 553-4; Req., 12 janv. 1904; Civ. r., 5 mars 1907, (1ère et 4e espèces); Civ., 7 août 1907, (5e espèce), D. P. 1909, 1, 444; Rennes, 4 nov. 1901, D. P. *ibid.* See also D. P. 1904, 1, 554, note 17.

412. The apprentices are assimilated to the workmen in the same branch of a class of workmen as themselves. Besançon, 17 nov. 1906, D. P. 1909, 2, 307. See Civ., 29 mai 1906, D. P. 1909, 1, 444; Limoges, 16 juil. 1901; Caen, 19 fév. 1906, D. P. 1909, 2, 307; Rennes, 26 déc. 1900, D. P. 1901, 2, 60; D. P. 1900, 4, 19.

413. Even should the apprentice's wages be lower than those of the lowest class of workmen, in the same business, he would be entitled to claim compensation according to the latter. D. P. 1904, 1, 554, note 17.

ARTICLE 8.

8. The wages upon which the rent is based, shall be, in the case of a workman engaged in the business during the twelve months next before the accident, the actual remuneration allowed him during such time, whether in money or in kind.

In the case of workmen employed less than twelve months before the accident, such wages shall be the actual remuneration which they have received since they were employed in the business, plus the average remuneration received by workmen of the same class during the time necessary to complete the twelve months.

If the work is not continuous the year's wages shall be calculated both according to the remuneration received while the work went on, and according to the workman's earnings during the rest of the year.

8. Le salaire servant de base à la fixation des rentes s'entend, pour l'ouvrier occupé dans l'entreprise pendant les douze mois écoulés avant l'accident, de la rémunération effective qui lui a été allouée pendant ce temps, soit en argent, soit en nature.

Pour les ouvriers occupés pendant moins de douze mois avant l'accident, il doit s'entendre de la rémunération effective qu'ils ont reçue depuis leur entrée dans l'entreprise, augmentée de la rémunération moyenne qu'ont reçue, pendant la période nécessaire pour compléter les douze mois, les ouvriers de la même catégorie.

Si le travail n'est pas continu, le salaire annuel est calculé tant d'après la rémunération reçue pendant la période d'activité que d'après le gain de l'ouvrier pendant le reste de l'année.

This section is copied from the three first paragraphs of art. 10 of the French Act.

414. The system of calculation governed by this section applies to rents only, and does not extend to cases of accident resulting in death.

415. If the person injured has been engaged in the business during the whole year preceding the accident, his wages are calculated according to the amount he has received in money or otherwise as the remuneration of his services during that period. All the gains which he receives by virtue of his contract of hiring, or of any local custom so well established by usage as to have been necessarily taken into account by him, all benefits, all allowances, are to be taken into consideration. Trib. civ. Mayenne, 23 mars, 1900, D. P. 1901, 2, 275; Douai, 25 juil. 1900, D. P. 1901, 1, 155; Douai, 29 janv. 1901, D. P. 1901, 2, 275; 2 B.-L. & W., 1863.

416. Remuneration includes the cost of board where it is supplied by the employer. Douai, 15 juil. 1900, D. P. 1901, 2, 155. It has been held in England that in the case of a seaman, the cost of the board to the shipowners was the test, not what it would have cost the man to keep himself on shore. Rosengvist *vs* Bowring, (1908), 2 K. B. 109. See also Trib. civ., Mayenne, 23 mars 1900, D. P. 1901, 2, 275.

417. It also includes the value of lodging supplied to the workman gratuitously in the factory. Paris, 16 fév. 1901, D. P. 1901, 2, 457. See Dothie *vs* Macandrew, (1908), 1 K. B. 803.

418. And the value of tools which has been advanced by the employer. Req., 23 mars 1908, D. P. 1908, 1, 392.

419. And payments made on behalf of the employee for the purpose of securing for him an old age pension, or the

benefits to be derived from a benevolent association. Trib. civ., Valenciennes, 17 nov. 1899, D. P. 1900, 2, 495; Bourges, 17 juil. 1901, D. P. 1902, 2, 481; *Contrà*: Bordeaux, 8 juil. 1902, D. P. *ibid.*

420. Remuneration also includes tips when they are so certain that a corresponding diminution in the amount of regular salary follows as a rule. D. P. 1902, 2, 297, note 1-2; Paris, 12 janv. 1901, D. P. 1901, 2, 253.

421. Tips paid by third parties cannot be taken into consideration unless it is a custom of the trade that purchasers regularly tip the workman who waits on them. Civ. c., 15 mars 1904, (2e arrêt), D. P. 1904, 1, 553. See also Grenoble, 8 août 1900, D. P. 1901, 2, 339; Trib. civ., Saint-Etienne, 13 mai 1901, D. P. 1902, 2, 297; 1 Sachet, 826; Angers, 5 mai 1900; Douai, 25 juin 1900; Trib. civ., Seine, 12 oct. 1900, D. P. 1901, 2, 339; Limoges, 17 mai 1901, D. P. 1902, 2, 297.

422. Tips paid by the employer are taken into consideration if they are paid at regular and fixed periods. Toulouse, 5 août 1901, D. P. 1902, 2, 481; Rouen, 28 fév. 1900, D. P. 1900, 2, 181.

423. In England it has been held that tips received by a waiter may be taken into account, subject to this, that remuneration would not include tips which are illicit, or involve or encourage a neglect or breach of duty to the employer, or are casual, and sporadic and trivial in amount. Penn *vs* Spiers, (1908), 1 K. B. 766.

424. Allowances made by railway companies to their employees as a reward for regular speed, cleanliness of engines, the saving of coal, etc., should be considered as remuneration

within the meaning of the section. D. P. 1903, 1, 106, note 1-4; Civ. r., 21 janv. 1903, (2 ar.), D. P. 1903, 1, 105; Civ. r., 3 août 1903, D.P. 1903, 1,570; Req., 4 mars 1903, (2 ar.), D.P. 1903, 1, 105; Civ. r., 27 oct. 1903, D. P. 1904, 1, 73; Req., 2 déc. 1903, D. P. 1904, 1, 373; Paris, 26 janv. 1901, D. P. 1902, 2, 298; Poitiers, 8 juil. 1901, D. P. 1902, 2, 481; D. P. 1902, 2, 298, note 1-2; Bourges, 26 nov. 1900, D. P. 1902, 2, 481; Pau, 27 mars 1903, D. P. 1904, 2, 358.

425. Allowances made by a railway company for absences from home should also be considered. Angers, 19 mai 1900, D. P. 1900, 2, 253; Douai, 29 mai 1900, D. P. 1900, 2, 478; Montpellier, 3 mai 1901, D. P. 1904, 1, 73-76; Pau, 27 mars 1903, D. P. 1904, 2, 358; Req., 2 déc. 1903, D. P. 1904, 1, 373.

426. But if these allowances are intended to cover the expenses to which the employee is put by reason of his absence from home, they should not be considered. Dijon, 2 avril 1900, D. P. 1900, 2 253; Lyon, 15 juin 1900, D. P. 1900, 2, 478; Lyon, 23 juil. 1900, D. P. 1902, 2, 364; Toulouse, 24 juil. 1900, D. P. 1900, 2, 478; Bourges, 26 nov. 1900, D. P. 1902, 2, 481; Lyon, 23 janv. 1901, D. P. 1902, 2, 364; Paris, 26 janv. 1901, D. P. 1902, 2, 298; Nancy, 29 avril 1901, D. P. 1902, 2, 364; Trib. civ. de Toulouse, 14 mars 1901 (5e espèce), D. P. 1902, 2, 481; Montpellier, 3 mai 1901, D. P. 1904, 1, 73-76; Bordeaux, 8 juil. 1902, D. P. 1902, 2, 481; *Contrà*s Caen, 19 nov. 1900, D. P. 1902, 2, 364.

427. The wages which form the basis of the rent are the wages or remuneration actually received, not a fictitious amount arrived at by any system of averages . Paris, 21 juil. 1900, D. P. 1901, 2, 178; Aix, 3 août 1900, D. P. *ibid.*

428. Remuneration received for extra time from the employer is taken into consideration. Angers, 16 mars 1901, D. P. 1903, 1, 572.

429. But remuneration received for work done for others in the same way cannot be considered. D. P. 1901, 2, 178, note 7; Hathaway *vs* Argus Company, (1901), 1 Q. B. 96; *Contrà*: Riom, 4 avril 1900, D. P. 1901, 2, 178.

430. Nothing is to be added to the wages for resting or idle days, and more particularly where laziness or other fault of the workman is the cause o fthe resting. Trib. civ., Lorient, 29 mai 1900, D. P. 1900, 2, 449.

431. Not even if these resting days are due to storms. Aix, 3 août 1900, D. P. 1901, 2, 178.

432. But the courts have allowed an addition to be made to the remuneration where the resting days were due to accidental causes, and were beyond the control of the workman. D. P. 1900, 2, 449, note 6-9; Trib. civ., Lorient, 29 mai 1900, D. P. 1902, 2, 449; Orléans, 30 mai 1900, D. P. *ibid.*

433. It is incumbent on the workman to establish that the resting was due to accident or *vis major*. Trib. civ., Lorient, 29 mai 1900, D. P. 1902, 2, 449.

434. Resting days due to the burning of the factory should be taken into consideration, and a sum representing the wages which would have been received during the period should be added to the amount actually received. Trib. civ., Lorient, 29 mai 1900, D. P. 1902, 2, 449.

435. So also should days lost through serious and prolonged illness. Trib. civ., Lorient, 29 mai 1900, D. P. 1902, 2, 449; Dijon, 3 juil. 1900, D. P. 1901, 2, 250; Aix, 3 août 1900, D. P. 1901, 2, 178; Trib. civ., Lyon, 30 nov. 1900, D. P. *ibid.*

436. Held however that short periods of illness due to the normal state of health of the workman should not be considered. Aix, 3 août 1900, D. P. 1901, 2, 178.

437. Time lost on military service should be allowed. Trib. civ., Valenciennes, 17 nov. 1899, D. P. 1900, 2, 495; Besançon, 8 août 1900, D. P. 1901, 2, 178.

438. According to some decisions, strikes are a mere suspension of work and must be considered as resting days. D. P. 1904, 1, 289, note 1-3; Dijon, 3 juil. 1900, D. P. 1901, 2, 250; Aix, 3 août 1900, D. P. 1901, 2, 178.

439. But if the strike was the voluntary act of the workman who could have continued to work had he desired to do so, no allowance is to be made for the lost days. D. P. 1904, 1, 289, note 1-3.

440. If his absence from work was due to the violence of the strike, the workman should receive an allowance equal to the wages lost. D. P. 1904, 1, 289, note 1-3; and authorities cited under no. 438 above.

441. It has been held on the other hand that if a man goes out on strike, he breaks the continuity of his employment. Civ. c., 4 mai 1904, D. P. 1904, 1, 289. See also Jones *vs* Ocean Coal Company, (1899), 2 Q. B. 124. In this case, he cannot be said to have been engaged in the business during the twelve months before the accident within the meaning of the first paragraph of the section, and the calculation of his wages follows the rule laid down in one of the other two paragraphs A new contract was necessarily formed between him and his employer after the strike. Civ. c., 4 mai 1904, D. P. 1904, 1, 289; 1 Sachet, 860.

442. The second paragraph of this section deals with the cases of workmen employed less than twelve months before the accident, although the factory or business continued throughout the whole year. In such cases the actual remuneration received during the term of the employment is added to the average remuneration received by other workmen of the same class during the time necessary to complete twelve months.. Req., 13 juil. 1903, D. P. 1903, 1, 572; Civ. c., 4 mai 1904, D. P. 1904, 1, 289.

443. The term remuneration has the same meaning in this paragraph as has been given to it above in connection with the first paragraph.

444. This average remuneration of other workmen depends on a number of facts and circumstances varying in every case, and the determination of the amount is left to the discretion of the Court. Req., 13 juil. 1903, D. P. 1903, 1, 572.

445. This system of calculation would not apply, however, to the case of a workman who, having been hired for a period exceeding twelve months in a business which was continuous, was unable to furnish the full twelve months of labor. Trib. civ., Lorient, 29 mai, 1900, D. P. 1900, 2, 449; Aix, 3 août 1900 D. P. 1901, 2, 178.

446. A workman who had been employed in a business during over ten years was able to give only eleven months work during the twelve months immediately preceding an accident; it was held that the case came within the meaning of paragraph two of this section and that it would be necessary to add to the remuneration actually received by him during the eleven months the average remuneration received during the other month by workmen of the same class. Besançon, 8 août 1900, D. P. 1901, 2, 178.

447. The third paragraph deals with cases where the work is not continuous, and enacts that the wages shall be ascertained by adding to the remuneration received by the workman while the work went on whatever earnings he realises during the rest of the year. The paragraph refers to such enterprises as are in the habit of shutting down during a portion of the year and to such others as are in the habit of giving work during a part only of each week, or a part only of each day. 1 Sachet, 875.

448. The third paragraph cannot be made to apply to the case of a workman who, although he did not give twelve months work, was nevertheless employed during a period of more than twelve months in the business which was open the whole year. D. P. 1901, 2, 178, note 7; Trib. civ., Lorient, 29 mai 1900, D. P. 1900, 2, 449; Req., 2 juin 1902, D. P. 1903, 1, 598.

449. In calculating the "average weekly earnings" for the purpose of awarding compensation for an accident, where it was an accepted incident of the employment that the work should cease during sixteen weeks of the year, including holidays and wakes, account must be taken of these stoppages, but not of voluntary absences or of absences from illness. Anslow *vs* Cannock Chase Colliery Co., 78 L. J. K. B. 679; 53 S. J. 519; 25 T. L. R. 570. — H. L. (E.) Affirming, (1909) 1 K. B. 352; 99 L. T. 901. — C. A.

ARTICLE 9.

9. As soon as the permanent incapacity to work is ascertained, or, in case of death of the person injured, within one month from the date of the agreement between the employer and the parties interested, or, if there be no agreement, within one month from the date of the final judgment condemning him to pay the same, the employer shall pay the amount of the compensation to the person injured or of his representatives, or, as the case may be, and, at the option of the person injured or of his representatives, shall pay the capital of the rent to an insurance company designated for that purpose by order in council.

9. Dès que la permanence de l'incapacité du travail est constatée, ou, en cas de mort de la victime, dans le mois de l'accord entre le chef d'entreprise et les intéressés, et, à défaut d'accord, dans le mois du jugement définitif qui le condamne, le chef d'entreprise doit payer, suivant le cas au choix de la victime ou de ses représentants, le montant de l'indemnité à la victime ou à ses représentants, ou le capital des rentes à une compagnie d'assurance agréée à cette fin par arrêté du lieutenant-gouverneur en conseil.

450. Absolute and permanent incapacity is determined by a judgment, or by agreement of the parties, as explained under section 2 (a), no. 285, *suprà*.

451. The statute does not state in what manner the permanent nature of a partial incapacity is to be fixed, but it

ordains that the rent due in cases of absolute as well as of partial incapacity of a permanent nature, shall be exigible as soon as the inability to work is ascertained to be permanent.

452. Where death results from the injury, the employer is allowed a delay of one month to pay the compensation; and this delay is computed from the date of the amicable agreement, or of the judgment by which the sum to be paid is determined. The reference to an amicable agreement in this section confirms what has been said under section 3, no. 354, *suprà*.

453. The injured person or his legal representatives, in case of his death, may require that the capital of the rent be paid into an insurance company to be designated for that purpose by the Lieutenant-Governor in Council. No Order in Council has been issued on the subject. This paragraph refers to a claim made during the lifetime of the inujred person for an indemnity under paragraphs (a) or (b) of section 2, which was not determined at the time of his death.

ARTICLE 10.

10. The rents payable under this act, shall be paid quarterly.

The compensation in case of temporary incapacity is payable at the same time as the wages of the other employees, and at intervals in no case to exceed sixteen days.

10. Les rentes créées en vertu de la présente loi sont payables par trimestre.

Les indemnités pour les cas d'incapacité temporaire sont payables aux mêmes époques que les salaires des autres employés, ne devant, en aucun cas, excéder seize jours.

This section is adapted from art. 3 of the French Act.

454. No time or place is fixed by the statute for the payment of the rents, and the rule of the common law should obtain by which payment is made at the domicile of the debtor, and at the end of the quarter. C. C. 1152; Dijon, 3 juil. 1900, D. P. 1901, 2, 250; Trib. civ., Narbonne, 17 juil. 1900, D. P. 1902, 2, 298; Caen, 19 nov. 1900, D. P. 1902, 2, 364; Paris, 26 janv. 1901, D. P. 1902, 2, 298; Nancy, 6 mars 1901, D. P. *ibid.*

455. It was held in France, under the Act as originally worded, that the courts had the power to order payments to be made of the rent in advance, as they have in cases of alimentary allowances. Trib. civ., Nancy, 11 déc. 1899, D. P. 1900, 2, 81; 12 déc. 1899, D. P. *ibid.;* 1 Sachet, 650.

But in the majority of cases it was held that the courts had not such power, as it was contrary to the principles of the common law. Trib. civ. de Nantes, 27 nov. 1899, D. P. 1900, 2, 81; Besançon, 14 fév. 1900, D. P. 1900, 2, 117; Dijon, 2 avril 1900, D. P. 1900, 2, 253; Besançon, 11 avril 1900, D. P. *ibid.;* Rouen, 11 mai 1900, D. P. 1901, 2, 178; Angers, 19 mai 1900, D. P. 1900, 2, 253; Trib. civ. de Nancy, 21 mai 1900, D. P. 1901, 2, 12; Dijon, 3 juil. 1900, D. P. 1901, 2, 250; Besançon, 11 juil. 1900, D. P. 1901, 2, 457; Grenoble, 5 nov. 1900, D. P. 1902, 2, 366; Nancy, 6 mars 1901, D. P. 1902, 2, 298; Req., 28 juil. 1902, D. P. 1903, 1, 352; 2 B.-L. & W. 1955.

456. Interest does not begin to run until after the first instalment falls due. D. P. 1902, 2, 364, note 5; Caen, 19 nov. 1900, D. P. 1902, 2, 364.

457. In case of temporary incapacity, the compensation is payable at the same time as the wages of the other workmen, that is, on the usual pay-day, which, however, must be so fixed as not to allow of an interval exceeding sixteen days between

each successive pay-day. Although nothing is said concerning the place of payment, it would seem that the payment should be made where it is customary to pay the other workmen. Strictly speaking, art. 1152 of the Civil Code should be made to apply. Compare Reid *vs* Tremblay, 12 L. N. 203.

ARTICLE 11.

11. The Lieutenant-Governor in Council may prescribe the conditions upon which the insurance companies applying by petition to be authorized to pay the said rents in virtue of this act, shall be authorized so to do; but no company that has not made a deposit with the Government of Canada or of this Province, in conformity with the laws of Canada or of this Province, of an amount deemed sufficient to ensure the performance of its obligations, shall be so authorized.

11. Le lieutenant-gouverneur en conseil détermine les conditions de l'agrégation des compagnies d'assurance qui demandent, par requête, à être autorisées à assumer le service des rentes conformément à la présente loi ; mais aucune compagnie qui n'a pas fait un dépôt entre les mains du gouvernement fédéral ou du gouvernement provincial, conformément à une loi du Canada ou de la province, d'un montant estimé suffisant pour assurer l'exécution de ses obligations, ne peut être ainsi autorisée.

No Order in Council has been issued in connection with this Act.

ARTICLE 12.

12. All compensation to which this act applies, shall be unalienable and exempt from seizure, but the employer may deduct from the amount of the indemnity any sum due to him by the workman.

12. Toutes les indemnités prévues par la présente loi sont incessibles et insaisissables, mais le chef d'industrie pourra retenir sur le montant de l'indemnité toute somme à lui due par l'ouvrier.

This section is taken from art. 3 of the French Act which applies the rule to rents only. B.-L. & W., 1981.

See Civil Code, 972; Code of Procedure, 599, par. 4; 8 Edward VII, ch. 69, sec. 77, (R. S. Q. 6908,) as to the exemption from seizure of benefits conferred by Benefit Associations .

458. The employer has the right to deduct from the rent or other compensation any sum due to him by the workman; but he may not deduct any part of the workman's wages, even with the latter's consent, for the purpose of paying premiums of insurance, annual dues to societies, or other contributions which are intended to secure him against the accidents provided for by this Act. Section 13. The French Act does not allow any set-off of sums due by the workman to his employer to be invoked against the compensation granted under the Act.

ARTICLE 13.

13. The compensation prescribed by the preceeding articles shall be entirely at the charge of the employer, and the employer shall not, for this purpose, deduct any part of the employee's wages, even with the consent of the latter.

13. Les indemnités déterminées aux articles qui précèdent sont à la charge exclusive du chef de l'entreprise, lequel ne peut faire aucune retenue sur les salaires, de ce chef, même avec le consentement du salarié.

This section is adapted from art. 30 of the French Act.

459. Any agreement or stipulation made prior to the accident by which the workman is made to contribute towards the payment of premiums of insurance, or the dues or assess-

ments of a benefit society with a view to protect the employer against claims under this statute is radically null and void. 2 Sachet, 1871; D. P. 1900, 2, 17, note 1-5; Trib. com., Seine, 22 sep. 1899, D. P. 1900, 2, 17; B.-L. & W. 2016-19.

460. But the employer may with the workman's consent deduct a sum from the latter's wages to aid in paying a premium of assurance for the purpose of securing advantages which he would not derive from an application of this Act, e. g., in case of an accident causing incapacity for less than seven days, ordinary illness not due to accident, old age, etc. 2 B.-L. & W. 2020; Trib. com., Seine, 22 sep. 1899, D. P. 1900, 2, 17.

461. The appellant was the widow of a servant of the respondent company, who was killed through the company's negligence. He was a member of the company's provident fund, which included insurance on death; but under the rules the company did not contribute to the insurance. By one of them, the member, in consideration of the company's contribution to the fund, was to have no claim in case of injury or death:—*Held,* that the appellant was not precluded from recovering damages on behalf of herself and children, inasmuch as the insurance money was no "indemnity or satisfaction" under article 1056, as the company did not contribute to the insurance fund, and the death bore no relation to the "offence or *quasi*-offence," since the insurance money would have equally had to be paid if the deceased had died a natural death. Reg. *vs* Grenier (30 Can. S. C. R. 42) overruled; Miller *vs* Grand Trunk Railway, 75 L. J. P. C. 45; (1906) A. C. 187; 94 L. T. 231. — P. C.

This section is the corollary of section 19.

ARTICLE 14.

SECTION II.

LIABILITY FOR ACCIDENTS.

14. The person injured or his representatives, shall continue to have, in addition to the recourse given by this act, the right to claim compensation under the common law from the person responsible for the accident other than the employer, his servants or agents.

The compensation so awarded to them shall, to the extent thereof, discharge the employer from his liability, and the action against third persons responsible for the accident, may be taken by the employer at his own risk, in place of the person injured or his representatives, if he or they refuse to take such action after having been put in default so to do.

SECTION II.

DE LA RESPONSABILITÉ.

14. Indépendamment de l'action résultant de la présente loi, la victime ou ses représentants conservent, contre les auteurs de l'accident, autre que le patron ou ses ouvriers et préposés, le droit de réclamer la réparation du préjudice causé, conformément aux règles du droit commun.

L'indemnité qui leur est accordée exonère à due concurrence le chef d'entreprise des obligations mises à sa charge. Cette action contre les tiers responsables peut même être exercée par le chef d'entreprise, à ses risques et périls, aux lieu et place de la victime ou de ses ayants droit, si ceux-ci négligent d'en faire usage après mise en demeure.

This section is adapted from art. 7 of the French Act.

462. Where a third party is the immediate author of the accident through his fault, the injured person may institute legal proceedings in damages against him under art. 1053 and following of the Civil Code, and any sums recovered in

this manner are imputed in partial or full payment and discharge of the claim which this Act gives against the employer. 1 Sachet, 768; 2 B.-L. & W. 1996.

463. His representatives, that is his legal representatives as distinguished from the beneficiaries mentioned in section 3, may bring suit under similar circumstances against such third person where the injured person has died; or they may continue a suit begun during his lifetime by the workman. 2 B.-L. & W., 1996; 1 Sachet, 769.

464. The employer may also bring an action against such third person at his own risk, if the injured person or his legal representatives refuse to take it after being put in default to do so. 1 Sachet, 770.

465. But the employer would have no right of action against a third person unless the accident forming the subject matter of the suit was one of those intended to be governed by this Act. 1 Sachet, 770.

466. And the employer would be entitled to intervene in any suit brought by the injured person or his representatives against the third person. 2 B.-L. & W., 2426.

467. But the employer is not entitled to call in such third party in warranty in an action brought by the injured person against himself under this Act, for the right of action of the employee is based upon a right wholly different from that which exists against the third party. 2 B.-L. & W., 2426; 1 Sachet, 781.

468. Neither can the employer bring such action against one of his own agents. 1 Sachet, 775.

469. Where the employer had placed his workmen under the charge of one of his foremen, and an accident occurred, the employer was held to have no recourse under this Act against such foreman. Civ. c., 14 mars 1904, D. P. 1904, 1, 53; D. P. 1908, 1, 185.

470. As to the meaning of the word "préposé", (agent), see D. P. 1908, 1, 185, note 1-7; D. P. 1903, 1, 105, note 1-4; D. P. 1908, 1, 105, note 1-4.

471. It is evident that in any event, the injured person can recover under this Act only the indemnities mentioned in the several sections, and any further sum obtained by suit or compromise from a third person as compensation for the same injuries, would be applied so as to extinguish the liability of the employer under the statute, in whole or in part, according to the sum so obtained. 2 B.-L. & W., 1999.

ARTICLE 15.

15. The employer shall be liable to the person injured or to his representatives mentioned in article 3 of this act, for injuries resulting from accidents caused by or in the course of the work of such person, in the cases to which this act applies, only for the compensation prescribed by this act.

15. Les dommages résultant des accidents survenant par le fait du travail ou à l'occasion du travail dans les cas prévus par la présente loi, ne donnent lieu, à charge du chef d'entreprise, au profit de la victime ou de ses ayants droit, tels que définis à l'article 3 de la présente loi, qu'aux seules réparations déterminées par cette loi.

This article is adapted from par. 1 of art. 2 of the French Act.

472. In all cases where a right of action is given by this statute to the employee or to his widow, his children or ascendants, against the employer, the common law remedy provided by arts. 1053 and following of the Civil Code is barred. Therefore, where the accident which forms the ground of the right of action comes within the definition given under article 1, the workman and his representatives mentioned in article 3 must proceed under this Act; and they cannot exercise against the employer any subsidiary recourse under the provisions of the common law. Dijon, 9 mai 1900, D. P. 1901, 2, 133; *Contrà*: Trib. civ., Coutances, 12 avril 1900, D. P. 2, 68; Caen, 31 oct. 1900, D. P. *ibid.*

473. Any conclusions based upon the Civil Code will be rejected. Trib. civ., Brive, 23 mars 1900, D. P. 1901, 2, 131; *Contrà*: Trib. civ., Saint-Gaudens, 12 mars 1900, D. P. 1901, 2, 89.

474. Especially where they are presented under the forms of procedure provided for by this Act. Trib. civ., Brive, *loc. cit.*

475. Where no special law is invoked in the conclusions of the demand, the court may consider the question whether the liability of the employer is not implicated under the common law as well as by the special enactments of this statute. Paris, 21 juil. 1900, D. P. 1901, 3, 156.

476. But if the case is governed by this Act, the question of the employer's liability under the common law will be disregarded. Paris, 21 juil. 1900, D. P. 1901, 3, 156.

477. A workman whose action under this statute has been dismissed because the accident in question did not arise out of

or in the course of the employment, may, if the facts warrant it, bring suit under the common law. Nancy, 28 mars 1903, D. P. 1903, 2, 429.

478. The rule laid down by this article applies as well to the servants and agents of the employer. See section 14. 2 B.-L. & W., 1992.

479. And any action instituted under this statute must be brought in the manner laid down by article 27, and not under the provisions of the Code of Procedure. Trib. civ., Lille, 28 déc. 1899, D. P. 1900, 2, 87; Nîmes, 19 août 1900, D. P. 1901, 2, 30; Trib. civ., Bagnères, 14 août 1900, D. P. 1902, 2, 86; Montpellier, 22 mars 1901, D. P. *ibid.;* 2 Sachet, 1220.

480. Article 4 of the statute gives the foreign workman and his representatives who cannot take advantage of its provisions, a right to invoke the common law remedy. The law of France gives them no such remedy in similar cases. The Imperial Act, Schedule 1, (18), deprives the workman who ceases to reside in the United Kingdom of his right to receive any weekly payments under the Act, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature.

481. Accidents happening in agricultural industries or in the navigation of vessels by sails remain subject to the rules of the common law. Article 1, par. 2.

ARTICLE 16.

16. All moneys paid by any insurance company or mutual benefit society, shall be applied, to the extent thereof, on account of the sums and rents payable in virtue of this act, if the employer proves that he has assumed the assessments or premiums demanded therefor. But the employer's liability shall continue if the company or society neglects to pay or becomes unable to pay the compensation for which it is liable.

16. Tous montants payés par une compagnie d'assurance ou une société de secours mutuels, sont imputés en déduction des sommes et rentes payables en vertu de la présente loi, jusqu'à due concurrence; si le patron justifie qu'il avait pris à sa charge les cotisations ou primes exigées pour cet objet. Mais l'obligation du patron continue si la compagnie ou société néglige ou devient incapable de servir l'indemnité à laquelle elle est tenue.

Art. 5 of the French Act is the basis of this section.

482. The employer is entitled to demand that all moneys received from an insurance company or a mutual benefit association by the workman or his representatives because of the accident, shall be deducted from the compensation which this statute obliges him to pay, provided he has himself paid or assumed all the dues, assessments or premiums that were required by the policy of insurance or the rules of the association. 1 Sachet, 737; Loubat, 1049.

483. The payment of medical and funeral expenses is regulated by par. 2 of article 3.

484. If, however, the insurance company or the benefit society neglects or is unable to pay the benefits or the insurance for which it is liable, the employer's responsibility under the Act remains in full force. Article 13, as already explained, forbids any deduction being made from the workman's wages for the purpose of paying such premiums or assessments.

ARTICLE 17.

17. Workmen who usually work alone shall not be subject to this act from the fact of their casually working with one or more other workmen.

17. Les ouvriers qui travaillent seuls d'ordinaire ne peuvent être assujettis à la présente loi par le fait de la collaboration accidentelle d'un ou de plusieurs autres ouvriers.

This section is copied from the second paragraph of art. 1 of the French Act.

485. This clause was added to the law in France in order to meet the views of those who sought to restrict the application of the new law to large establishments. If only one man is employed in a business, it is evident that he could not take advantage of the benefits of the statute, and would have to be content with the common law remedy against his employer in case of accident. 2 B.-L. & W., 1769.

ARTICLE 18.

18. The person injured shall be bound, if the employer requires him so to do, in writing, to submit to an examination by a practicing physician chosen and paid by the employer, and if he refuses to submit to such examination or opposes the same in any way, his right to compensation as well as any remedy to enforce the same shall be suspended until the examination takes place.

The person injured, shall, in such case, always be entitled to demand that the examination shall take place in the presence of a physician chosen by him.

18. La victime est tenue, si le chef d'entreprise l'exige par écrit, de subir un examen fait par un médecin pratiquant, choisi et payé par le chef d'entreprise, et, si elle refuse de se soumettre à cet examen ou s'y oppose en aucune façon, son droit à l'indemnité, ainsi que tout recours pour le mettre à effet, reste suspendu jusqu'à ce que l'examen ait lieu.

La victime, dans ce cas, aura toujours le droit d'exiger que l'examen soit fait en présence d'un médecin de son choix.

This article is adapted from art. 4 of the French Act.

486. It has been held that the courts had no right, under the common law, to oblige the plaintiff, the injured party, to submit to an examination by a physician on a demand made to that effect by the defendant. Manseau *vs* The City of Montreal, 7 R. J. 399.

487. The employer provides and pays the examining physician, and the examination, upon a demand made to that effect by the employee, must be conducted in presence of a physician chosen by him.

488. If the employee refuses to undergo such examination, his right to any compensation under the statute is suspended until an examination does take place with his consent, and any suit or other legal proceeding begun by him may, on the application of the employer, be delayed meanwhile.

489. The demand must be made in writing, and proof of its having been served upon the employee should be forthcoming upon any application being made to have the payments or the proceedings suspended.

490. An injured workman in receipt of weekly payments under the Act went to Australia without intimating to his employers that he was going or leaving his address. In an application by the employers for review of the weekly payments, the Court suspended *in hoc statu* the workman's right to the weekly payments, on the ground that he was obstructing medical examination within section 11 of the First Schedule of the Act. Finnie *vs* Duncan, 7 F. 254. — Ct. of Sess.

See, also, Strannigan *vs* Baird, 6 F. 784; Baird *vs* Kane, 7 F. 461; Niddrie & Benhar Coal Company *vs* McKay, 5 F. 1121.

ARTICLE 19.

19. Every agreement contrary to the provisions of this act shall be absolutely null.	**19.** Toute convention contraire aux dispositions de la présente loi est nulle de plein droit.

This article is taken *verbatim* from art. 30 of the French Law.

491. This statute is one of public order, and any agreement in conflict with its provisions is radically null. Civ. r., 4 janv. 1904; Civ. r., 6 janv. 1904, D. P. 1904, 1, 73-75; Trib. civ., Lyon, 26 déc. 1907, D. P. 1909, 2, 129, (See note in margin of report by Loubat).

492. A close examination of the statute unfolds several ways by which its evident intention may be defeated by amicable agreement between the parties. It has already been pointed out, under article 3, that the representatives of the deceased employee and the employer may agree upon the amount of the compensation to be paid, provided it be at least one thousand dollars. While there is a maximum limit to the capital of the rents payable in ordinary cases of permanent disability, there is no corresponding minimum, nor is the rate of interest fixed, although doubtless the legal rate would govern in the absence of any agreement, so that the parties are at liberty, notwithstanding article 19, to agree upon any lesser sum as the amount of the capital, and upon any rate of interest, the result being that instead of the one-half of the yearly wages or of the diminution in the yearly wages being paid during ten or twelve years, the quarterly payments would exhaust the capital in a shorter period of time. An agreement along these lines would not clash with any section of the statute. And, in the same way, if either party were to admit that he had been guilty of inexcusable fault in connection with the accident, the limit fixed by article 2, would be varied, and the number of payments increased or diminished accordingly. The parties may consent that the injury be treated as absolutely or partially permanent, or as temporary only, or they may agree that the permanent nature of the inability to earn wages be dated from any antecedent day, but the workman cannot consent to a rent which is not equal to one-half the sum representing his yearly wages, or one-half the sum by

which his wages have been reduced, as the case may be. An agreement under article 3 by which the apportionment among the representatives is determined, is also lawful, and article 27 refers to conciliatory methods which the judge may adopt to bring about a settlement.

493. Apart from the foregoing instances, it is not easy to conceive of any form of agreement affecting the compensation which would be legal or binding. Trib. civ., Auxerre, 26 déc. 1900, D. P. 1901, 2, 252; Civ. r., 21 déc. 1903, D. P. 1904, 1, 73.

ARTICLE 20.

SECTION III.

SECURITY.

20. The claim of the person injured or of his representatives, for medical and funeral expenses, as well as for compensation allowed for temporary incapacity to work, shall be secured by privilege on the moveable and immoveable property of the employer, ranking concurrently with the claim mentioned in paragraph 9 of article 1994 of the Civil Code.

Payment of compensation for permanent incapacity to work, or in respect of an accident followed by death, shall so long as the compensation

SECTION III.

DE LA GARANTIE.

20. La créance de la victime de l'accident ou de ses ayants droit relative aux frais de médecin et aux frais funéraires, ainsi qu'aux indemnités allouées à la suite de l'incapacité temporaire de travail, est garantie par un privilège sur les biens meubles et immeubles du chef d'entreprise prenant rang concurremment avec la créance mentionnée au paragraphe 9 de l'article 1994 du Code civil.

Le paiement de l'indemnité pour incapacité permanente de travail, ou accident suivi de

has not been paid, or so long as the sum necessary to procure the required rent has not been paid to an insurance company or otherwise paid in virtue of this act, be secured by a privilege upon moveable property of he same nature and rank, and by a privilege upon immoveable property ranking after other privileges, and after hypothecs.

mort, est garanti, tant que l'indemnité n'a pas été payée ou que la somme requise pour constituer la rente exigible n'a pas été versée à une compagnie d'assurance ou autrement payée en vertu de cette loi, par un privilège de même nature et de même rang sur les meubles et prenant rang sur les immeubles après les autres privilges et hypothèques.

French Act, art. 23 .

494. The claim of the person injured or of his representative ranks concurrently with that of servants for wages as a special privilege upon the moveable property of the employer, for the medical and funeral expenses mentioned in article 3, and for the compensation allowed by article 2, (c).

495. A like privilege of the same rank is enjoyed for the rents due in cases of permanent incapacity, (article 2, (a), (b)), and for the compensation due in case of death under article 3. This latter compensation and the rents in question are furthermore secured by a special privilege upon the employer's immovable property which takes rank after other privileges and after hypothecs, until such time as payment has been made of the compensation, or until the capital of the rents has been paid over to an insurance company.

496. Conventional hypothecs registered prior to these claims would rank preferentially to them. The privileges upon immoveables are subject to the rules laid down in the Civil Code, 2009 to 2015.

ARTICLE 21.

SECTION IV.

PROCEDURE.

21. The Superior Court and the Circuit Court shall have jurisdiction of every action or contestation in virtue of this act, in accordance with the jurisdiction given to them respectively, by the Code of Civil Procedure.

SECTION IV.

DE LA PROCÉDURE.

21. La Cour supérieure et la Cour de circuit connaissent de toute demande et de toute contestation résultant de la présente loi, conformément à la juridiction qui leur est attribuée respectivement par le Code de procédure civile.

497. The jurisdiction of the Superior and Circuit Courts is defined in the Code of Procedure, arts. 48, 49 and 54.

498. It is not stated that the District Magistrate's Court may try cases arising under this Act, nor is it stated that the Superior and Circuit Courts shall alone have jurisdiction. See 61, C. C. P.

ARTICLE 22.

22. Review and appeal of or from judgments susceptible thereof, shall be taken within fifteen days from the rendering of such judgments, and if not so taken the right thereto shall lapse. Such appeals shall have precedence.

22. L'appel et la revision des jugements qui en sont susceptibles doivent être interjetés dans les quinze jours de la date de leur reddition, à peine de déchéance. Ces appels ont préséance sur les autres.

499. The jurisdiction of the Court of Review is defined by art. 52 C. C. P. as amended by 8 Edward VII., ch. 74; and the jurisdiction of the Court of King's Bench sitting in appeal is regulated by arts. 43 and 44, C. C. P., as amended by the same statute.

500. The procedure governing Review is contained in arts. 1189 and following, C. C. P., and Appeals are regulated by arts. 1209, and following.

501. The delay for inscribing in Review has been extended to fifteen days, and the right of appeal to the court of King's Bench has been limited to the same delay.

ARTICLE 23.

23. The court or judge may, upon petition, at any stage of the case, whether before judgment or while an appeal is pending, grant a provisional daily allowance to the person injured or to his representatives.

23. Le tribunal ou le juge peut, à toute phase de la procédure, avant jugement, ou pendant l'instance en appel, accorder, sur requête, une provision à la victime ou à ses ayants cause sous forme d'allocation journalière.

French Act, art. 16.

502. The same right is recognized in all suits for alimentary allowance under the common law. The provisional allowance may be followed by execution notwithstanding reviews of appeals, under art. 594 C. C. P.

503. The judge may grant such allowance during the long vacation, notwithstanding art. 15 C. C. P. Prudhomme *vs* Joubert, 14 R. J. 499; *Contrà*: Rivet *vs* Gagnon, 3 R. P. 214; Currie *vs* Cunin, 5 R. P. 56.

ARTICLE 24.

24. There shall be no trial by jury in any action taken in virtue of this act, but the proceedings shall be summary, and shall be subject to the provisions of the Code of Civil Procedure respecting such matters.

24. Le procès par jury est aboli dans toute cause en vertu de la présente loi ; mais les procédures sont sommaires et soumises aux dispositions du Code de procédure civile relatives à ces matières.

504. Summary matters are regulated by arts. 1150 and following of the Code of Civil Procedure.

ARTICLE 25.

25. The action to recover any compensation to which this act applies shall, as against all persons, be subject to a prescription of one year.

25. L'action en recouvrement des indemnités prévues par cette loi, se prescrit contre toute personne par un an.

French Act, art. 18.

505. This prescription would fall under the rule laid down by art. 2188, C. C., and may be applied by the court without being pleaded.

506. It runs from the date of the accident.

507. It is subject to interruption like all prescriptions ; and may be renounced. D. P. 1901, 2, 489, note 1-28; Lyon,

3 avril 1901 (deux arrêts), D. P. 1901, 2, 489; Douai, 21 mai 1901, D. P. *ibid.;* Grenoble, 25 mai 1901, D. P. *ibid.*; Poitiers, 24 juin 1901, D. P. *ibid.;* Besançon, 10 juil. 1901, D. P. *ibid.;* Aix, 1er août 1901, D. P. *ibid.;* Toulouse, 6 août 1901, D. P. *ibid.;* Paris, 26 juil. 1902, D. P. 1904, 1, 514.

508. Prescription is interrupted by service of the petition mentioned in article 27. C. C. 2224.

509. Prescription is interrupted by any express or tacit acknowledgment by the employer of the alleged right of action of the employee or of his representatives. And if the employer has tendered a rent which was not accepted, or has acknowledged by letter that the employee would become entitled to a rent should his incapacity become permanent, or has offered to take back the workman at the same salary but with the understanding that no work would be exacted of him in return, the prescription will be held to have been interrupted. Caen, 6 fév. 1901, D. P. 1901, 2, 489; Nancy, 29 juin 1901, D. P. *ibid.;* Grenoble, 24 avril 1901, D. P. *ibid.;* Trib. civ., Angoulême, 23 janv. 1901, D. P., *ibid.;* 2 Sachet, 1305.

510. The appearance of the employer to answer the petition mentioned in article 27 suffices to interrupt the prescription according to some authorities. Nancy, 25 mars 1901; Lyon, 3 avril 1901; Grenoble, 24 avril 1901, D. P., 1901, 2, 489, 491; 2 Sachet, 1300.

511. But the better opinion seems to be that it does not. Trib. civ., Marseille, 3 mars 1901; Nancy, 16 avril 1901, D. P. 1901, 2, 489; Civ. r., 11 nov. 1903, D. P. 1904, 1, 161.

512. The fact of the employer having given first aid to the injured employee, and of having paid for medical attend-

ance upon him, does not interrupt prescription. Civ. r., 18 et 30 mars 1903 (1e espèce) ; Civ. r., 11 nov. 1903, D. P. 1904, 1, 161 ; Locomotive & Machinery Co. & Lemay, R. J. Q. 17, K. B. 333.

513. According to one theory, the payment of a compensation for temporary incapacity suffices to interrupt the prescription of a demand for a rent where the injury takes on a permanent character. Douai, 8 mai 1901 ; Poitiers, 24 juin 1901 ; Toulouse, 6 août 1901 ; Trib. civ., Saint-Marcellin, 2 fév. 1901, (13e esp.), D. P. 1901, 2, 489 ; Trib. civ., Ussel, 27 juil. 1901, D. P. 1902, 2, 394.

514. The contrary doctrine is based upon the argument that the two claims are based on distinct and independent causes, and the interruption would not ensue from the bare fact of the payment without other proof of an acknowledgment. D. P. 1901, 2, 489, note 1-28, II, B. ; Nancy, 16 avril 1901, D. P. 1901, 2, 489 ; Nancy, 28 avril 1901, D. P. *ibid.;* Douai, 8 mai 1901, D. P. *ibid.:* Douai, 21 mai 1901, D. P. *ibid.;* Douai, 10 juil. 1901, D. P. *ibid.;* Paris, 27 juil. 1901, D. P. *ibid.;* Paris, 27 juin 1902, D. P. 1904, 2, 97 ; Civ. r., 18 mars 1903, D. P. 1904, 1, 161 ; Civ. r., 30 mars 1903, D. P. *ibid.;* Req., 1er avril 1903, D. P. 1904, 1, 508 ; Req., 4 nov. 1903, D. P. *ibid.;* Civ. r., 11 nov. 1903, D. P. 1904, 1, 161 ; Civ. r., 2 mars 1904, D. P. *ibid.;* Civ. c., 23 juin 1904, D. P. 1905, 1, 113 ; Civ. r., 25 juil. 1904, D. P. *ibid.*

515. But if the payments made by the employer were made in a general way, without imputation, and without any understanding as to the nature or the amount of the indemnity, they might be held to be interruptive of prescription. The judge has a discretionary power to decide the matter according to the evidence generally, and his decision will not be disturbed *en cassation.* Caen, 6 fév. 1901 ; Lyon, 21 mai 1901 ; Grenoble, 25 mai 1901, D. P. 1901, 2, 489.

516. Prescription under the Act is not suspended during minority or interdiction. Civ. r., 18 et 30 mars 1903, D. P. 1904, 1, 161; Civ. c., 5 août 1903, D. P. *ibid.;* Civ. c., 11 nov. 1903, D. P. *ibid.;* Civ. c., 8 déc. 1903, D. P. *ibid.;* Civ. r., 5 janv. 1904, D. P. *ibid.;* Civ. c., 2 mars 1904, D. P. *ibid.;* Civ. c., 18 avril 1904, D. P. 1905, 1, 113; Civ. c., 19 avril 1904, D. P. *ibid.;* Civ. c., 23 juin 1904, D. P. *ibid.;* Civ. r., 5 juil. 1904, D. P. *ibid.;* Civ. r., 25 juil. 1904, D. P. *ibid.*

Our statute has adopted this view, and allows the prescription to run against "all persons".

517. Where the incapacity appeared at first to be merely temporary, but the injured person died subsequently from the effects of the accident, the prescription was held to run from the date of the accident, and not from the date of the death. Nancy, 27 avril 1901, D. P. 1901, 2, 489; Paris, 27 juin 1902, D. P. 1904, 2, 97; Rennes, 30 déc. 1902, D. P. *ibid.;* Civ. r., 18 mars 1903, D. P. 1904, 1, 161; Civ. r., 30 mars 1903 (1ère espèce), D. P. *ibid.;* Civ. c., 5 août 1903, D. P. *ibid.;* Civ. c., 11 nov. 1903, D. P. *ibid.;* Civ. c., 8 déc. 1903, D. P. *ibid.;* Civ. r., 5 janv. 1904, D. P. *ibid.;* Civ. c., 2 mars 1904, D. P. *ibid.;* Req. 30 nov. 1903, D. P. 1904, 1, 328; Civ. c., 18 avril 1904, D. P. 1905, 1, 113; Civ. c., 19 avril 1904, D. P. *ibid.;* Civ. c., 23 juin 1904, D. P. *ibid.;* Civ. r., 5 juil. 1904, D. P. *ibid.;* Civ. r., 25 juil. 1904, D. P. *ibid.; Contrà*: Limoges, 27 nov. 1901, D. P. 1902, 2, 394; Toulouse, 10 mars 1902, D. P. *ibid.*

ARTICLE 26.

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

26. Une demande en revision des indemnités, fondée sur une aggravation ou une atténuation de l'infirmité de la victime, est ouverte pendant quatre années à dater de l'accord survenu entre les parties, ou du jugement définitif. Cette demande est faite par action.

French Act, art. 19.

518. Under this article either of the parties, (the employer, the employee and representatives), may bring suit at any time during the four years next after the final judgment, or after any lawful agreement that may have been reached on the subject of the compensation, for the purpose of having the amount of the indemnity revised. This suit may be founded on any alteration in the nature of the injured person's incapacity; for instance, where the inability which at first was considered to be of a temporary nature, assumes a permanent character. D. P. 1904, 2, 97, note 8-16; Douai, 21 avril 1902, D. P. 1904, 2, 97; Grenoble, 30 mai 1902, D. P. *ibid.;* Douai, 24 juin 1902, D. P. *ibid.;* Douai, 11 août 1902, D. P. *ibid.;* Douai, 25 nov. 1902, D. P. *ibid.;* Dijon, 15 déc. 1902, D. P. *ibid.;* Douai, 9 mars 1903, D. P. *ibid.;* Limoges, 2 juin 1903, D. P. *ibid.;* Trib. civ. de Versailles, 24 déc. 1903, D. P. *ibid.;* Civ. c., 16 mai 1905, D. P. 1907, 4, 458; Civ. c., 18 juil. 1905, D. P. *ibid.;* Civ .c., 29 mai 1906, D. P. *ibid.;* Civ. c., 31 juil. 1906, D. P. *ibid.;* Civ. c., 6 nov. 1906, D. P. *ibid.;* Civ. r., 13

fév. 1906, D. P. 1907, 1, 358; *Contrà*: Rennes, 30 déc. 1902, D. P. 1904, 2, 97.

519. The revision is demanded by an action in the ordinary form. This is in accordance with the jurisprudence on the same subject, under the common law. Noreau *vs* Bocquet, R. J. Q. 17 S. C. 77; Delisle *vs* Pillet, 7 L. N. 78; Roach *vs* Morahan, R. J. Q. 17 S. C. 372.

520. The revision may be asked not only where the question of the permanency of the inability has not been as yet decided, but even where a former application by the workman for the allowance of a rent because of permanent disability has been rejected as prescribed D. P. 1904, 2, 97, note 8-16; Douai, 21 avril 1902; Douai, 11 août 1902; Douai, 25 nov. 1902; Douai, 25 nov. 1902, D. P. 1904, 2, 97.

521. And even after a first suit for a rent was rejected because the permanent nature of the injury had not been established. D. P. 1904, 2, 97, note 8-16; Douai, 25 nov. 1902; Dijon, 15 déc. 1902; Limoges, 2 juin 1903; Trib. civ., Versailles, 24 déc. 1903, D. P. 1904, 2, 97.

522. And even after a former suit demanding the revision of a judgment fixing the indemnity had been dismissed for want of evidence of any aggravation of the workman's disability; in as much as such suits for revision may be renewed without clashing so long as the delay of four years has not expired. D. P. 1904, 2, 97, note 8-16; Douai, 25 nov. 1902, D. P. 1904, 2, 97; 2 Sachet, 1380.

523. A demand for revision presupposes the discovery of some new facts bearing on a change in the disability of the workman, and will not be entertained if it appears that the only subject besought is the re-opening of a dispute already decided. Trib. civ., Versailles, 24 déc. 1903, D. P. 1904, 2, 97; Limoges, 2 juin 1903, D. P. *ibid.*; Bordeaux, 31 juil.

1902, D. P. 1904, 2, 97; Req., 25 mars 1908, D. P. 1908, 1, 385.

524. The mere aggravation or diminution of the injured person's infirmity does not suffice to justify a demand for revision, unless there results therefrom a modification in his ability to work or in his wages. Thus, a workman already permanently and absolutely incapacitated because of the loss of one eye and both his arms, is not entitled to demand a revision because of his losing his remaining eye. 2 Sachet, 1361.

525. The employer may make use of the right given him by article 18 of having a medical examination made of the injured person, for the purpose of such revision, whether he be plaintiff or defendant.

526. The aggravation of the disability must be the normal result of the accident, and not the consequences of the defective self treatment adopted by the injured person. D. P. 1904, 2, 97, note 8-16; Aix, 17 jan. 1903, D. P. 1904, 2, 97; Loubat, 1398.

527. During the period of four years mentioned in the text, the condition of the injured person may remain uncertain, and give rise to several demands for revision, and to varying decisions according to changing circumstances; and a first decision that the then aggravated condition of the workman's inability could not be traced to the accident, does not prevent a subsequent decision that more recent aggravated symptoms are due to it alone. Req., 25 mars 1908, D. P. 1908, 1, 385; Req., 9 janv. 1906, D. P. 1907, 1, 181; Civ. c., 6 nov. 1906 (7ème esp.), D. P. 1907, 1, 458.

528. The aggravation may consist in the subsequent death of the injured person.

529. A revision was allowed where a workman who had undergone an operation for cataract because of an accident,

lost the use of his eye within three years thereafter. Civ. r., 13 juil. 1906, D. P. 1907, 1, 358.

530. The rules laid down by articles 21, 22 and 24 apply to actions under this article. D. P. 1904, 2, 100, note 17-30; Nancy, 13 fév. 1903, D. P. 1904, 2, 97; 2 Sachet, 1374.

531. And it would seem that the provisions of article 27 also apply . Trib. civ., Boulogne-sur-Mer, 25 avril 1902, D. P. 1904, 2, 97-101.

532. Other decisions hold that the demand for revision follows the rules of procedure in ordinary cases. Lyon, 21 mai 1901; Trib. civ., Toulouse, 3 janv. 1903; Dijon, 7 juil. 1903, D. P. 1904, 2, 97; Trib. civ., Seine, 17 nov. 1902; Douai, 9 mars 1903; Rouen, 4 avril 1903, D. P. *ibid.;* Trib. civ., Narbonne, 11 mars 1903, D. P. 1904, 2, 100.

533. The court may fix the time from which the increase or decrease in the compensation is to take effect. See Douai, 16 mars 1903, D. P. 1904, 2, 97, D. P. 1904, 103, note 41-43.

534. Article 23 justifies the court seized of a demand for revision to grant a provisional daily allowance. D. P. 1904, 2, 103, note 41-43; *Contrà*: Limoges, 2 juin 1903, D. P. 1904, 2, 114.

535. Where an employer applies under the Workmen's Compensation Act, 1906, Schedule I, clause (16), for a review of a weekly payment to a workman in respect of an accident which has resulted in both muscular and nervous mischief, it is not sufficient for the employer to shew that the muscular mischief has come to an end. If the nervous effects of the accident remain, so that the workman is unable to work, he has not recovered his earning capacity and is still entitled to compensation. Eaves *vs* Blaenclydach Colliery Co., (1909) 2 K. B. 73.—C. A.

536. On an application by an employer under the Workmen's Compensation Act, 1906, Schedule I, (16), to have the weekly payments reviewed on the ground that the incapacity no longer existed, there is jurisdiction, in a case where the incapacity, owing to the effects of the original accident, may recur, to suspend instead of ending the compensation by awarding a nominal sum or by making a declaration of continuing liability, and this is the proper course to be adopted in these cases. Singer Manufacturing Co. *vs* Clelland (42 Sc. L. R. 757) questioned on this point. Tynron (owners *vs* Morgan (1909(2 K. B. 66; 100 L. T. 641.—C. A.

ARTICLE 27.

27. Before having recourse to the provisions of this act, the workman must be authorized thereto by a judge of the Superior Court upon petition served upon the employer. The judge shall grant such petition without the hearing of evidence or the taking of affidavits, but may before granting the same use such means as he may think useful to bring about an understanding between the parties. If they agree, he may render judgment in accordance with such agreement, upon the petition, and such judgment shall have the same effect as a final judgment of a competent court.

27. Avant d'avoir recours aux dispositions de la présente loi, l'ouvrier doit y être autorisé par un juge de la Cour supérieure, sur requête signifiée au patron. Le juge, sans enquête ni affidavit, doit accorder cette requête, mais peut auparavant employer tels moyens qu'il croit utiles pour amener une entente entre les parties. Si elles s'accordent, il peut rendre jugement conformément à cette entente, sur la requête même, et ce jugement a le même effet qu'un jugement final de la cour de juridiction compétente.

537. This article assimilates the introductory procedure to be adopted in any suit by the workman to that laid down by art. 1090 of the Code of Procedure in actions for separation of property, with the additional requirement that the petition must be served upon the employer. An affidavit as to the truth of the petition should accompany it, under Rule of Practice 47, notwithstanding that it is added in the statute that the judge shall grant the petition without hearing any evidence or the taking of affidavits.

538. The judge may use such means to reconcile the views of the different parties as he deems expedient; and if he succeeds, he may there and then enter a judgment upon the petition, grafted on the understanding; and this judgment will have all the effects of a final judgment of the court.

539. This understanding or agreement is not of the nature of a transaction, and where the employee is a minor the formalities required in cases of transaction need not be adopted. 2 Sachet, 1163.

540. The judge, when a petition is presented to him, is not called upon to decide whether the case falls under the statute rather than under the common law. Dijon, 10 déc. 1900; Bordeaux, 15 janv. 1901, D. P. 1902, 2, 175; 2 Sachet, 1171.

541. And any preliminary objections which the defendant may have to urge against the demand may be fyled after the return of the writ of summons, and within the usual delays. Same authorities; C. C. P. 1154.

542. It must not be forgotten that this is a paternal Act, that the workman is treated by it as if he were an infant in law, that it deprives him of his ownership of his wages, for he cannot dispose of them as he would wish, (C. C. 406), and

cannot contribute with his employer to the protection afforded by a policy of insurance against accident, (art. 13), and cannot agree to liberate his employer from the liability which this Act imposes upon him, (art. 19). A judgment of a court cannot override the law. And, starting with these two ideas, it is evident that the understanding which the parties are permitted to reach, and which the judge may sanction by a judgment in form, cannot reduce the rent or the compensation, except in the manner already pointed out under article 19.

543. If the parties fail to reach an understanding, permission is granted as of right, and the action follows the rules laid down by articles 21 and 24.

544. Offers of settlement made before the judge at the time of the presentation of the petition, are not binding unless they are accepted and a judgment is based upon them; and if a suit ensues, the employer may plead that he is not liable in any manner notwithstanding his having expressed his willingness to treat with the employee in presence of the judge. Besançon, 11 déc. 1901, D. P. 1903, 2, 307.

ARTICLE 28.

28. This act shall come into force on the first day of January, 1910, and shall not apply to pending cases nor to accidents which have happened before it came into force.	**28.** La présente loi entrera en vigueur le premier janvier 1910, et ne s'appliquera ni aux causes pendantes ni aux accidents arrivés avant sa mise en vigueur.

545. The Act was assented to on the 29th May, 1909, and is expressly declared not to be retroactive in its effects; so that it is not applicable to accidents which happened prior to the first day of January, 1910.

APPENDIX A

LOI DU 9 AVRIL 1898

Concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail.

TITRE I

Indemnités en cas d'accidents.

Art. 1er.—Les accidents survenus par le fait du travail, ou à l'occasion du travail, aux ouvriers et employés occupés dans l'industrie du bâtiment, les usines, manufactures, chantiers, les entreprises de transport par terre et par eau, de chargement et de déchargement, les magasins publics, mines, minières, carrières, et, en outre, dans toute exploitation ou partie d'exploitation dans laquelle sont fabriquées ou mises en œuvre des matières explosives, ou dans laquelle il est fait usage d'une machine mue par une force autre que celle de l'homme ou des animaux, donnent droit, au profit de la victime ou de ses représentants, à une indemnité à la charge du chef d'entreprise, à la condition que l'interruption de travail ait duré plus de quatre jours.

Les ouvriers qui travaillent seuls d'ordinaire ne pourront être assujettis à la présente loi par le fait de la collaboration accidentelle d'un ou de plusieurs de leurs camarades.

Art. 2.—(L. 22 mars 1902.) Les ouvriers et employés désignés à l'article précédent ne peuvent se prévaloir, à raison des accidents dont ils sont victimes dans leur travail, d'aucunes dispositions autres que celles de la présente loi.

Ceux dont le salaire annuel dépasse deux mille quatre cents francs ne bénéficient de ces dispositions que jusqu'à concurrence de cette somme. Pour le surplus, ils n'ont droit qu'au quart des rentes stipulées à l'article 3, à moins de conventions contraires élevant le chiffre de la quotité.

Art. 3.—(L. 31 mars 1905.) Dans les cas prévus à l'article 1er, l'ouvrier ou employé a droit:

Pour l'incapacité absolue et permanente, à une rente égale aux deux-tiers de son salaire annuel;

Pour l'incapacité partielle et permanente, à une rente égale à la moitié de la réduction que l'accident aura fait subir au salaire;

Pour l'incapacité temporaire, si l'incapacité de travail a duré plus de quatre jours, à une indemnité journalière, sans distinction entre les jours ouvrables et les dimanches et jours fériés, égale à la moitié du salaire touché au moment de l'accident, à moins que le salaire ne soit variable; dans ce dernier cas, l'indemnité journalière est égale à la moitié du salaire moyen des journées de travail pendant le mois qui a précédé l'accident. L'indemnité est due à partir du cinquième jour après celui de l'accident; toutefois, elle est due à partir du premier jour si l'incapacité de travail a duré plus de dix jours. L'indemnité journalière est payable aux époques et lieu de paye usités dans l'entreprise, sans que l'intervalle puisse excéder seize jours.

Lorsque l'accident est suivi de mort, une pension est servie aux personnes ci-après désignées, à partir du décès, dans les conditions suivantes:

a) Une rente viagère égale à 20 pour 100 du salaire an-

nuel de la victime pour le conjoint survivant non divorcé ou séparé de corps, à la condition que le mariage ait été contracté antérieurement à l'accident.

En cas de nouveau mariage, le conjoint cesse d'avoir droit à la rente mentionnée ci-dessus; il lui sera alloué, dans ce cas, le triple de cette rente, à titre d'indemnité totale.

b) Pour les enfants, légitimes ou naturels, reconnus avant l'accident, orphelins de père ou de mère, âgés de moins de seize ans, une rente calculée sur le salaire annuel de la victime à raison de 15 pour 100 de ce salaire s'il n'y a qu'un enfant, de 25 pour 100 s'il y en a deux, de 35 pour 100 s'il y en a trois et de 40 pour 100 s'il y en a quatre ou un plus grand nombre.

Pour les enfants, orphelins de père et de mère, la rente est portée, pour chacun d'eux, à 20 pour 100 du salaire.

L'ensemble de ces rentes ne peut, dans le premier cas, dépasser 40 pour 100 du salaire ni 60 pour 100 dans le second.

c) Si la victime n'a ni conjoint ni enfant dans les termes des paragraphes *a* et *b*, chacun des ascendants et descendants qui étaient à sa charge recevra une rente viagère pour les ascendants et payable jusqu'à seize ans pour les descendants. Cette rente sera égale à 10 pour 100 du salaire annuel de la victime, sans que le montant total des rentes ainsi allouées puisse dépasser 30 pour 100.

Chacune des rentes prévues par le paragraphe *c* est, le cas échéant, réduite proportionnellement.

Les rentes constituées en vertu de la présente loi sont payables à la résidence du titulaire, ou au chef-lieu de canton de cette résidence, et, si elles sont servies par la Caisse nationale des retraites, chez le préposé de cet établissement désigné par le titulaire.

Elles sont payables par trimestre et à terme échu; toutefois, le tribunal peut ordonner le payement d'avance de la moitié du premier arrérage.

Ces rentes sont incessibles et insaisissables.

Les ouvriers étrangers, victimes d'accidents, qui cesseraient de résider sur le territoire français, recevront, pour toute indemnité, un capital égal à trois fois la rente qui leur avait été allouée.

Il en sera de même pour leurs ayants droit étrangers cessant de résider sur le territoire français, sans que toutefois le capital puisse alors dépasser la valeur actuelle de la rente d'après le tarif visé à l'article 28.

Les représentants étrangers d'un ouvrier étranger ne recevront aucune indemnité si, au moment de l'accident, ils ne résidaient pas sur le territoire français.

Les dispositions des trois alinéas précédents pourront, toutefois, être modifiées par traités dans la limite des indemnités prévues au présent article, pour les étrangers dont les pays garantiraient à nos nationaux des avantages équivalents.

Art. 4.—(L. 31 mars 1905.) Le chef d'entreprise supporte, en outre, les frais médicaux et pharmaceutiques et les frais funéraires. Ces derniers sont évalués à la somme de 100 francs au maximum.

La victime peut toujours faire choix elle-même de son médecin et de son pharmacien. Dans ce cas, le chef d'entreprise ne peut être tenu des frais médicaux et pharmaceutiques que jusqu'à concurrence de la somme fixée par le juge de paix du canton où est survenu l'accident, conformément à un tarif qui sera établi par arrêté du ministre du commerce, après avis d'une commission spéciale comprenant des représentants de syndicats professionnels ouvriers et patronaux, de sociétés d'assurance contre les accidents du travail et de syndicats de garantie, et qui ne pourra être modifié qu'à intervalles de deux ans.

Le chef d'entreprise est seul tenu dans tous les cas, en outre des obligations contenues en l'article 3, des frais d'hospitalisation qui, tout compris, ne pourront dépasser le tarif établi

pour l'application de l'article 24 de la loi du 15 juillet 1893, majoré de 50 pour 100, ni excéder jamais 4 francs par jour pour Paris, ou 3 francs 50 partout ailleurs.

Les médecins et pharmaciens ou les établissements hospitaliers peuvent actionner directement le chef d'entreprise.

Au cours du traitement, le chef d'entreprise pourra désigner au juge de paix un médecin chargé de le renseigner sur l'état de la victime. Cette désignation, dûment visée par le juge de paix, donnera audit médecin accès hebdomadaire auprès de la victime en présence du médecin traitant, prévenu deux jours à l'avance par lettre recommandée.

Faute par la victime de se prêter à cette visite, le payement de l'indemnité journalière sera suspendu par décision du juge de paix, qui convoquera la victime par simple lettre recommandée.

Si le médecin certifie que la victime est en état de reprendre son travail et que celle-ci le conteste, le chef d'entreprise peut, lorsqu'il s'agit d'une incapacité temporaire, requérir du juge de paix une expertise médicale qui devra avoir lieu dans les cinq jours.

Art. 5.—Les chefs d'entreprise peuvent se décharger pendant les trente, soixante ou quatre-vingt-dix premiers jours à partir de l'accident, de l'obligation de payer aux victimes les frais de maladie et l'indemnité temporaire, ou une partie seulement de cette indemnité, comme il est spécifié ci-après, s'ils justifient:

1° Qu'ils ont affilié leurs ouvriers à des sociétés de secours mutuels et pris à leur charge une quote-part de la cotisation qui aura été déterminée d'un commun accord, et en se conformant aux statuts-type approuvés par le ministre compétent, mais qui ne devra pas être inférieure au tiers de cette cotisation;

2° Que ces sociétés assurent à leurs membres, en cas de blessures, pendant trente, soixante ou quatre-vingt-dix jours, les

soins médicaux et pharmaceutiques et une indemnité journalière.

Si l'indemnité journalière servie par la société est inférieure à la moitié du salaire quotidien de la victime, le chef d'entreprise est tenu de lui verser la différence.

Art. 6.—Les exploitants de mines, minières et carrières peuvent se décharger des frais et indemnités mentionnés à l'article précédent moyennant une subvention annuelle versée aux caisses ou sociétés de secours constituées dans ces entreprises en vertu de la loi du 29 juin 1894.

Le montant et les conditions de cette subvention devront être acceptés par la société et approuvés par le ministre des travaux publics.

Ces deux dispositions seront applicables à tous autres chefs d'industrie qui auront créé en faveur de leurs ouvriers des caisses particulières de secours en conformité du titre 3 de la loi du 29 juin 1894. L'approbation prévue ci-dessus sera, en ce qui les concerne, donnée par le ministre du commerce et de l'industrie.

Art. 7.—(L. 22 mars 1902.) Indépendamment de l'action résultant de la présente loi, la victime ou ses représentants conservent contre les auteurs de l'accident, autres que le patron ou ses ouvriers et préposés, le droit de réclamer la réparation du préjudice causé, conformément aux règles du droit commun.

L'indemnité qui leur sera allouée exonèrera à due concurrence le chef de l'entreprise des obligations mises à sa charge. Dans le cas où l'accident a entraîné une incapacité permanente ou la mort, cette indemnité devra être attribuée sous forme de rente servie par la Caisse nationale des retraites.

En outre de cette allocation sous forme de rente, le tiers reconnu responsable pourra être condamné, soit envers la victi-

me, soit envers le chef de l'entreprise, si celui-ci intervient dans l'instance, au payement des autres indemnités et frais prévus aux articles 3 et 4 ci-dessus.

Cette action contre les tiers responsables pourra même être exercée par le chef d'entreprise, à ses risques et périls, aux lieu et place de la victime ou de ses ayants droit si ceux-ci négligent d'en faire usage.

Art. 8.—Le salaire qui servira de base à la fixation de l'indemnité allouée à l'ouvrier âgé de moins de seize ans ou à l'apprenti victime d'un accident ne sera pas inférieur au salaire le plus bas des ouvriers valides de la même catégorie occupés dans l'entreprise.

Toutefois, dans le cas d'incapacité temporaire, l'indemnité de l'ouvrier âgé de moins de seize ans ne pourra pas dépasser le montant de son salaire.

Art. 9.—Lors du règlement définitif de la rente viagère, après le délai de revision prévu à l'article 9, la victime peut demander que le quart au plus du capital nécessaire à l'établissement de cette rente, calculé d'après les tarifs dressés pour les victimes d'accidents par la Caisse des retraites pour la vieillesse, lui soit attribué en espèces.

Elle peut aussi demander que ce capital, ou ce capital réduit du quart au plus, comme il vient d'être dit, serve à constituer sur sa tête une rente viagère réversible, pour moitié au plus, sur la tête de son conjoint. Dans ce cas, la rente viagère sera diminuée de façon qu'il ne résulte de la réversibilité aucune augmentation de charges pour le chef d'entreprise.

Le tribunal, en chambre du conseil, statuera sur ces demandes.

Art. 10.—(L. 31 mars 1905.) Le salaire servant de base à la fixation des rentes s'entend, pour l'ouvrier occupé dans l'en-

treprise pendant les douze mois avant l'accident, de la rémunération effective qui lui a été allouée pendant ce temps, soit en argent, soit en nature.

Pour les ouvriers occupés pendant moins de douze mois avant l'accident, il doit s'entendre de la rémunération effective qu'ils ont reçue depuis leur entrée dans l'entreprise, augmentée de la rémunération qu'ils auraient pu recevoir pendant la période de travail nécessaire pour compléter les douze mois, d'après la rémunération moyenne des ouvriers de la même catégorie pendant ladite période.

Si le travail n'est pas continu, le salaire annuel est calculé, tant d'après la rémunération reçue pendant la période d'activité que d'après le gain de l'ouvrier pendant le reste de l'année.

Si, pendant les périodes visées aux alinéas précédents, l'ouvrier a chômé exceptionnellement et pour des causes indépendantes de sa volonté, il est fait état du salaire moyen qui eût correspondu à ces chômages.

TITRE II

Déclaration des accidents et enquête.

Art. 11.—(L. 22 mars 1902.) Tout accident ayant occasionné une incapacité de travail doit être déclaré dans les quarante-huit heures, non compris les dimanches et jours fériés, par le chef d'entreprise ou ses préposés, au maire de la commune qui en dresse procès-verbal et en délivre immédiatement récépissé.

La déclaration et le procès-verbal doivent indiquer, dans la forme réglée par décret, les nom, qualité et adresse du chef d'entreprise, le lieu précis, l'heure et la nature de l'accident,

les circonstances dans lesquelles il s'est produit, la nature des blessures, les noms et adresses des témoins.

Dans les quatre jours qui suivent l'accident, si la victime n'a pas repris son travail, le chef d'entreprise doit déposer à la mairie, qui lui en délivre immédiatement récépissé, un certificat du médecin indiquant l'état de la victime, les suites probables de l'accident, et l'époque à laquelle il sera possible d'en connaître le résultat définitif.

La déclaration d'accident pourra être faite dans les mêmes conditions par la victime ou ses représentants jusqu'à l'expiration de l'année qui suit l'accident.

Avis de l'accident dans les formes réglées par décret est donné immédiatement par le maître à l'inspecteur départemental du travail ou à l'ingénieur ordinaire des mines chargé de la surveillance de l'entreprise.

L'article 15 de la loi du 2 novembre 1892 et l'article 11 de la loi du 12 juin 1893 cessent d'être applicables dans les cas visés par la présente loi.

Art. 12.—(L. 22 mars 1902.) Dans les vingt-quatre heures qui suivent le dépôt du certificat, et au plus tard dans les cinq jours qui suivent la déclaration de l'accident, le maire transmet au juge de paix du canton où l'accident s'est produit la déclaration et soit le certificat médical, soit l'attestation qu'il n'a pas été produit de certificat.

Lorsque, d'après le certificat médical produit en exécution du paragraphe précédent ou transmis ultérieurement par la victime à la justice, la blessure paraît devoir entraîner la mort ou une incapacité permanente, absolue ou partielle de travail, ou lorsque la victime est décédée, le juge de paix, dans les vingt-quatre heures, procède à une enquête à l'effet de rechercher:

1o La cause, la nature et les circonstances de l'accident;

2o Les personnes victimes et le lieu où elles se trouvent, le lieu et la date de leur naissance;

3o La nature des lésions;

4o Les ayants droit pouvant, le cas échéant, prétendre à une indemnité, le lieu et la date de leur naissance;

5o Le salaire quotidien et le salaire annuel des victimes;

6o La société d'assurance à laquelle le chef d'entreprise était assuré ou le syndicat de garantie auquel il était affilié.

Les allocations tarifées pour le juge de paix et son greffier en exécution de l'article 29 de la présente loi et de l'article 31 de la loi de finances du 13 avril 1900, seront avancées par le Trésor.

Art. 13.—L'enquête a lieu contradictoirement dans les formes prescrites par les articles 35, 36, 37, 38 et 39 du Code de procédure civile, en présence des parties intéressées ou celles-ci convoquées d'urgence par lettre recommandée.

Le juge de paix doit se transporter auprès de la victime de l'accident qui se trouve dans l'impossibilité d'assister à l'enquête.

Lorsque le certificat médical ne lui paraîtra pas suffisant, le juge de paix pourra désigner un médecin pour examiner le blessé.

Il peut aussi commettre un expert pour l'assister dans l'enquête.

Il n'y a pas lieu, toutefois, à nomination d'expert dans les entreprises administrativement surveillées, ni dans celles de l'Etat placées sous le contrôle d'un service distinct du service de gestion, ni dans les établissements nationaux où s'effectuent des travaux que la sécurité publique oblige à tenir secrets. Dans ces divers cas, les fonctionnaires chargés de la surveillance ou du contrôle de ces établissements ou entreprises et, en ce qui concerne les exploitations minières, les délégués à la sécurité des ouvriers mineurs, transmettent au juge de paix, pour être joint au procès-verbal d'enquête, un exemplaire de leur rapport .

Sauf les cas d'impossibilité matérielle dûment constatés dans le procès-verbal, l'enquête doit être close dans le plus bref délai et, au plus tard, dans les dix jours à partir de l'accident. Le juge de paix avertit, par lettre recommandée, les parties de la clôture de l'enquête et du dépôt de la minute au greffe, où elles pourront, pendant un délai de cinq jours, en prendre connaissance et s'en faire délivrer une expédition, affranchie du timbre et de l'enregistrement. A l'expiration de ce délai de cinq jours, le dossier de l'enquête est transmis au président du tribunal civil de l'arrondissement.

Art. 14.—Sont punis d'une amende de un à quinze francs les chefs d'industrie ou leurs préposés qui ont contrevenu aux dispositions de l'article 11.

En cas de récidive dans l'année, l'amende peut être élevée de seize à trois cents francs.

L'article 463 du Code pénal est applicable aux contraventions prévues par le présent article.

TITRE III

Compétence. — Juridictions. — Procédure. — Revision.

Art. 15.—(L. 31 mars 1905.) Sont jugées en dernier ressort par le juge de paix du canton où l'accident s'est produit, à quelque chiffre que la demande puisse s'élever et dans les quinze jours de la demande, les contestations relatives tant aux frais funéraires qu'aux indemnités temporaires.

Les indemnités temporaires sont dues jusqu'au jour du décès ou jusqu'à la consolidation de la blessure, c'est-à-dire jusqu'au jour où la victime se trouve, soit complètement guérie, soit définitivement atteinte d'une incapacité permanente;

elles continuent, dans ce dernier cas, à être servies jusqu'à la décision définitive prévue à l'article suivant, sous réserve des dispositoins du quatrième alinéa dudit article.

Si l'une des parties soutient, avec un certificat médical à l'appui, que l'incapacité est permanente, le juge de paix doit se déclarer incompétent par une décision dont il transmet, dans les trois jours, l'expédition au président du tribunal civil. Il fixe en même temps, s'il ne l'a fait antérieurement, l'indemnité journalière.

Le juge de paix connaît des demandes relatives au payement des frais médicaux et pharmaceutiques jusqu'à trois cents francs en dernier ressort et à quelque chiffre que ces demandes s'élèvent, à charge d'appel dans la quinzaine de la décision.

Les décisions du juge de paix relatives à l'indemnité journalière sont exécutoires nonobstant opposition. Ces décisions sont susceptibles de recours en cassation pour violation de la loi.

Lorsque l'accident s'est produit en territoire étranger, le juge de paix compétent, dans les termes de l'article 12 et du présent article, est celui du canton où est situé l'établissement ou le dépôt auquel est attachée la victime.

Lorsque l'accident s'est produit en territoire français, hors du canton où est situé l'établissement ou le dépôt auquel est attachée la victime, le juge de paix de ce dernier canton devient exceptionnellement compétent, à la requête de la victime ou de ses ayants droit, adressée, sous forme de lettre recommandée, au juge de paix du canton où l'accident s'est produit, avant qu'il n'ait été saisi dans les termes du présent article ou bien qu'il n'ait clos l'enquête prévue à l'article 13. Un récépissé est immédiatement envoyé au requérant par le greffe, qui avise, en même temps que le chef d'entreprise, le juge de paix devenu compétent et, s'il y a lieu, transmet à ce dernier le dossier de l'enquête, dès sa clôture, en avertissant les parties, conformément à l'article 13.

Si, après transmission du dossier de l'enquête au président du tribunal du lieu de l'accident et avant convocation des parties, la victime ou ses ayants droit justifient qu'ils n'ont pu, avant la clôture de l'enquête, user de la faculté prévue à l'alinéa précédent, le président peut, les parties entendues, se dessaisir du dossier et le transmettre au président du tribunal de l'arrondissement où est situé l'établissement ou le dépôt auquel est attachée la victime.

Art. 16.—(L. 31 mars 1905.) En ce qui touche les autres indemnités prévues par la présente loi, le président du tribunal de l'arrondissement, dans les cinq jours de la transmission du dossier, si la victime est décédée avant la clôture de l'enquête, ou, dans le cas contraire, dans les cinq jours de la production par la partie la plus diligente, soit de l'acte de décès, soit d'un accord écrit des parties reconnaissant le caractère permanent de l'incapacité, ou bien de la réception de la décision du juge de paix visée au troisième alinéa de l'article précédent, ou enfin, s'il n'a été saisi d'aucune de ces pièces, dans les cinq jours précédant l'expiration du délai de prescription prévu à l'article 18, lorsque la date de cette expiration lui est connue, convoque la victime ou ses ayants droit, le chef d'entreprise, qui peut se faire représenter et, s'il y a assurance, l'assureur. Il peut, du consentement des parties, commettre un expert dont le rapport doit être déposé dans le délai de huitaine.

En cas d'accord entre les parties, conforme aux prescriptions de la présente loi, l'indemnité est définitivement fixée par l'ordonnance du président qui en donne acte en indiquant, sous peine de nullité, le salaire de base et la réduction que l'accident aura fait subir au salaire.

En cas de désaccord, les parties sont renvoyées à se pourvoir devant le tribunal, qui est saisi par la partie la plus diligente et statue comme en matière sommaire, conformément au titre XXIV du livre II du Code de procédure civile. Son jugement est exécutoire par provision.

En ce cas, le président, par son ordonnance de renvoi et sans appel, peut substituer à l'indemnité journalière une provision inférieure au demi-salaire ou, dans la même limite, allouer une provision aux ayants droit. Ces provisions peuvent être allouées ou modifiées en cours d'instance par voie de référé sans appel. Elles sont incessibles et insaisissables et payables dans les mêmes conditions que l'indemnité journalière.

Les arrérages des rentes courent à partir du jour du décès ou de la consolidation de la blessure, sans se cumuler avec l'indemnité journalière ou la provision.

Dans les cas où le montant de l'indemnité ou de la provision excède les arrérages dus jusqu'à la date de la fixation de la rente, le tribunal peut ordonner que le surplus sera précompté sur les arrérages ultérieurs dans la proportion qu'il détermine.

S'il y a assurance, l'ordonnance du président ou le jugement fixant la rente allouée spécifie que l'assureur est substitué au chef d'entreprise dans les termes du titre IV de façon à supprimer tout recours de la victime contre ledit chef d'entreprise.

Art. 17.—(L. 22 mars 1902.) Les jugements rendus en vertu de la présente loi sont susceptibles d'appel selon les règles du droit commun. Toutefois l'appel, sous réserve des dispositions de l'article 449 du Code de procédure civile, devra être interjeté dans les trente jours de la date du jugement s'il est contradictoire, et, s'il est par défaut, dans la quinzaine à partir du jour où l'opposition ne sera plus recevable.

L'opposition ne sera plus recevable en cas de jugement par défaut contre partie, lorsque le jugement aura été signifié à personne, passé le délai de quinze jours à partir de cette signification.

La cour statuera d'urgence dans le mois de l'acte d'appel. Les parties pourront se pourvoir en cassation.

Toutes les fois qu'une expertise médicale sera ordonnée, soit par le juge de paix, soit par le tribunal ou par la cour d'appel, l'expert ne pourra être le médecin qui a soigné le blessé, ni un médecin attaché à l'entreprise ou à la société d'assurance à laquelle le chef d'entreprise est affilié .

Art. 18.—(L. 22 mars 1902.) L'action en indemnité prévue par la présente loi se prescrit par un an à dater du jour de l'accident, ou de la clôture de l'enquête du juge de paix, ou de la cessation du payement de l'indemnité temporaire.

L'article 55 de la loi du 10 août 1871 et l'article 124 de la loi du 5 avril 1884 ne sont pas applicables aux instances suivies contre les départements ou les communes, en exécution de la présente loi.

Art. 19.—(L. 31 mars 1905.) La demande en revision de l'indemnité fondée sur une aggravation ou une atténuation de l'infirmité de la victime, ou son décès par suite des conséquences de l'accident, est ouverte pendant trois ans à compter, soit de la date à laquelle cesse d'être due l'indemnité journalière, s'il n'y a point eu attribution de rente, soit de l'accord intervenu entre les parties ou de la décision judiciaire passée en force de chose jugée, même si la pension a été remplacée par un capital en conformité de l'article 21.

Dans tous les cas, sont applicables à la revision les conditions de compétence et de procédure fixées par les articles 16, 17 et 22. Le président du tribunal est saisi par voie de simple déclaration au greffe.

S'il y a accord entre les parties, conforme aux prescriptions de la présente loi, le chiffre de la rente revisée est fixé par ordonnance du président, qui donne acte de cet accord en spécifiant, sous peine de nullité, l'aggravation ou l'atténuation de l'infirmité.

En cas de désaccord, l'affaire est renvoyée devant le tribunal, qui est saisi par la partie la plus diligente et qui statue comme en matière sommaire et ainsi qu'il est dit à l'article 16.

Au cours des trois années pendant lesquelles peut exercer l'action en revision, le chef d'entreprise pourra désigner au président du tribunal un médecin chargé de le renseigner sur l'état de la victime.

Cette désignation, dûment visée par le président, donnera au dit médecin accès trimestriel auprès de la victime. Faute par la victime de se prêter à cette visite, tout payement d'arrérages sera suspendu par décision du président qui convoquera la victime par simple lettre recommandée.

Les demandes prévues à l'article 9 doivent être portées devant le tribunal au plus tard dans le mois qui suit l'expiration du délai imparti pour l'action en révision.

Art. 20. Aucune des indemnités déterminées par la présente loi ne peut être attribuée à la victime qui a intentionnellement provoqué l'accident.

Le tribunal a le droit, s'il est prouvé que l'accident est dû à une faute inexcusable de l'ouvrier, de diminuer la pension fixée au titre 1er.

Lorsqu'il est prouvé que l'accident est dû à une faute inexcusable du patron ou de ceux qu'il s'est substitués dans la direction, l'indemnité pourra être majorée, sais sans que la rente ou le total des rentes allouées puisse dépasser soit la réduction, soit le montant du salaire annuel.

(L. 22 mars 1902.) En cas de poursuites criminelles, les pièces de procédure seront communiquées à la victime ou à ses ayants droit.

Le même droit appartiendra au patron ou à ses ayants droit.

Art. 21.—(L. 31 mars 1905.) Les parties peuvent toujours, après détermination du chiffre de l'indemnité due à la

victime de l'accident, décider que le service de la pension sera suspendu et remplacé, tant que l'accord subsistera, par tout autre mode de réparation.

En dehors des cas prévus à l'article 3, la pension ne pourra être remplacée par le payement d'un capital que si elle n'est pas supérieure à 100 francs et si le titulaire est majeur. Ce rachat ne pourra être effectué que d'après le tarif spécifié à l'article 28.

Art. 22.—(L. 22 mars 1902.) Le bénéfice de l'assistance judiciaire est accordé de plein droit, sur le visa du procureur de la République, à la victime de l'accident ou à ses ayants droit devant le président du tribunal civil et devant le tribunal.

Le procureur de la République procède comme il est prescrit à l'article 13 (paragraphes 2 et suivants) de la loi du 22 janvier 1851, modifiée par la loi du 10 juillet 1901.

(L. 17 avril 1906.) "Le bénéfice de l'assistance judiciaire s'applique de plein droit à l'acte d'appel et, le cas échéant, à l'acte par lequel est signifié le désistement de l'appel. Le premier président de la cour, sur la demande qui lui sera adressée à cet effet, désignera l'avoué près la cour dont la constitution figurera dans l'acte d'appel, et commettra un huissier pour le signifier."

Si la victime de l'accident se pourvoit devant le bureau d'assistance judiciaire pour en obtenir le bénéfice en vue de toute la procédure d'appel, elle sera dispensée de fournir les pièces justificatives de son indigence.

Le bénéfice de l'assistance judiciaire s'étend de plein droit aux instances devant le juge de paix, à tous les actes d'exécution mobilière et immobilière et à toute contestation incidente à l'exécution des décisions judiciaires.

L'assisté devra faire déterminer par le bureau d'assistance judiciaire de son domicile la nature des actes et procédure d'exécution auxquels l'assistance s'appliquera.

TITRE IV

Garanties.

Art. 23.—La créance de la victime de l'accident ou de ses ayants droit relative aux frais médicaux, pharmaceutiques et funéraires, ainsi qu'aux indemnités allouées à la suite de l'incapacité temporaire de travail, est garantie par le privilège de l'article 2101 du Code civil et y sera inscrite sous le no. 6.

Le payement des indemnités pour incapacité permanente de travail ou accidents suivis de mort est garanti conformément aux dispositions des articles suivants.

Art. 24.—A défaut, soit par les chefs d'entreprise débiteurs, soit par les sociétés d'assurances à primes fixes ou mutuelles, ou les syndicats de garantie liant solidairement tous leurs adhérents, de s'acquitter, au moment de leur exigibilité, des indemnités mises à leur charge à la suite d'accidents ayant entraîné la mort ou une incapacité permanente de travail, le payement en sera assuré aux intéressés par les soins de la Caisse nationale des retraites pour la vieillesse, au moyen d'un fonds spécial de garantie constitué comme il va être dit et dont la gestion sera confiée à ladite Caisse.

Art. 25.—Pour la constitution du fonds spécial de garantie, il sera ajouté au principal de la contribution des patentes des industriels visés par l'article 1er, quatre centimes additionnels. Il sera perçu sur les mines une taxe de cinq centimes par hectare concédé.

Ces taxes pourront, suivant les besoins, être majorées ou réduites par la loi des finances.

Art. 26.—La Caisse nationale des retraites exercera un re-

cours contre les chefs d'entreprise débiteurs, pour le compte desquels des sommes auront été payées par elle, conformément aux dispositions qui précèdent.

En cas d'assurance du chef d'entreprise, elle jouira, pour le remboursement de ses avances, du privilège de l'article 2102 du Code civil sur l'indemnité due par l'assureur et n'aura plus de recours contre le chef d'entreprise.

Un règlement d'administration publique déterminera les conditions d'organisation et de fonctionnement du service conféré par les dispositions précédentes à la Caisse nationale des retraites et, notamment, les formes du recours à exercer contre les chefs d'entreprise débiteurs ou les sociétés d'assurances et les syndicats de garantie, ainsi que les conditions dans lesquelles les victimes d'accidents ou leurs ayants droit seront admis à réclamer à la Caisse le payement de leurs indemnités.

Les décisions judiciaires n'emporteront hypothèque que si elles sont rendues au profit de la Caisse des retraites exerçant son recours contre les chefs d'entreprise ou les compagnies d'assurances.

Art. 27.—(L. 31 mars 1905.) Les compagnies d'assurances mutuelles ou à primes fixes contre les accidents, françaises ou étrangères, sont soumises à la surveillance et au contrôle de l'Etat et astreintes à constituer des réserves ou cautionnements dans les conditions déterminées par un règlement d'administration publique.

Le montant des réserves mathématiques et des cautionnements sera affecté par privilège au payement des pensions et indemnités.

Les syndicats de garantie seront soumis à la même surveillance, et un règlement d'administration publique déterminera les conditions de leur création et de leur fonctionnement.

A toute époque, un arrêté du ministre du commerce (du travail et de la prévoyance sociale) peut mettre fin aux opéra-

tions de l'assureur qui ne remplit pas les conditions prévues par la présente loi ou dont la situation financière ne donne pas des garanties suffisantes pour lui permettre de remplir ses engagements. Cet arrêté est pris après avis conforme du comité consultatif des assurances contre les accidents du travail, l'assureur ayant été mis en demeure de fournir ses observations par écrit dans un délai de quinzaine . Le comité doit émettre son avis dans la quinzaine suivante.

Le dixième jour, à midi, à compter de la publication de l'arrêté au *Journal officiel*, tous les contrats contre les risques régis par la présente loi cessent de plein droit d'avoir effet, les primes restant à payer ou les primes payées d'avance n'étant acquises à l'assureur qu'en proportion de la période d'assurance réalisée, sauf stipulation contraire dans les polices.

Le comité consultatif des assurances contre les accidents du travail est composé de vingt-quatre membres, savoir: deux sénateurs et trois députés élus par leurs collègues; le directeur de l'assurance et de la prévoyance sociales; le directeur du travail; le directeur général de la Caisse des dépôts et consignations; trois membres agrégés de l'institut des actuaires français; le président du tribunal de commerce de la Seine ou un président de section délégué par lui; le président de la Chambre de commerce de Paris ou un membre délégué par lui; deux ouvriers membres du conseil supérieur du travail; un professeur de la faculté de droit de Paris; deux directeurs ou administrateurs de sociétés mutuelles d'assurances contre les accidents du travail ou syndicats de garantie; deux directeurs ou administrateurs de sociétés anonymes du travail; quatre personnes spécialement compétentes en matière d'assurances contre les accidents du travail. Un décret détermine le mode de nomination et de renouvellement des membres ainsi que la désignation du président, du vice-président et du sécrétaire.

Les frais de toute nature résultant de la surveillance et du contrôle seront couverts au moyen de contributions proportion-

nelles au montant des réserves ou cautionnements, et fixés annuellement pour chaque compagnie ou association, par arrêté du ministre du commerce.

Art. 28.—Le versement du capital représentatif des pensions allouées en vertu de la présente loi ne peut être exigé des débiteurs.

Toutefois, les débiteurs qui désireront se libérer en une fois pourront verser le capital représentatif de ces pensions à la Caisse nationale des retraites, qui établira à cet effet, dans les six mois de la promulgation de la présente loi, un tarif tenant compte de la mortalité des victimes d'accidents et de leurs ayants droit.

Lorsqu'un chef d'entreprise cesse son industrie, soit volontairement, soit par décès, liquidation judiciaire ou faillite, soit par cession d'établissement, le capital représentatif des pensions à sa charge devient exigible de plein droit et sera versé à la Caisse nationale des retraites. Ce capital sera déterminé au jour de son exigibilité, d'après le tarif visé au paragraphe précédent.

Toutefois, le chef d'entreprise ou ses ayants droit peuvent être exonérés du versement de ce capital, s'ils fournissent des garanties qui seront à déterminer par un règlement d'administration publique.

TITRE V

Dispositions générales.

Art. 29.—Les procès-verbaux, certificats, actes de notoriété, significations, jugements et autres actes faits ou rendus en vertu et pour l'exécution de la présente loi, sont délivrés gratuitement, visés pour timbre et enregistrés gratis lorsqu'il y a lieu à la formalité de l'enregistrement.

Dans les six mois de la promulgation de la présente loi, un décret déterminera les émoluments des greffiers de justice de paix pour leur assistance et la rédaction des actes de notoriété, procès-verbaux, certificats, significations, jugements, envois de lettres recommandées, extraits, dépôts de la minute d'enquête au greffe, et pour tous les actes nécessités par l'application de la présente loi, ainsi que les frais de transport auprès des victimes et d'enquête sur place.

Art. 30.—(L. 31 mars 1905.) Toute convention contraire à la présente loi est nulle de plein droit. Cette nullité, comme la nullité prévue au deuxième alinéa de l'article 16 et au troisième alinéa de l'article 19, peut être poursuivie par tout intéressé devant le tribunal visé aux dits articles.

Toutefois, dans ce cas, l'assistance judiciaire n'est accordée que dans les conditions du droit commun.

La décision qui prononce la nullité fait courir à nouveau, du jour où elle devient définitive, les délais impartis soit pour la prescription, soit pour la revision.

Sont nulles de plein droit et de nul effet les obligations contractées, pour rémunération de leurs services, envers les intermédiaires qui se chargent, moyennant émoluments convenus à l'avance, d'assurer aux victimes d'accidents ou à leurs ayants droit le bénéfice des instances ou des accords prévus aux articles 15, 16, 17 et 19.

Est passible d'une amende de 16 francs à 300 francs et, en cas de récidive dans l'année de la condamnation, d'une amende de 500 à 2,000 francs, sous réserve de l'application de l'article 463 du Code pénal: 1o tout intermédiaire convaincu d'avoir offert les services spécifiés à l'alinéa précédent; 2o tout chef d'entreprise ayant opéré, sur le salaire de ses ouvriers ou employés, des retenues pour l'assurance des risques mis à sa charge par la présente loi; 3o toute personne qui, soit par menaces de renvoi, soit par refus ou menace de refus des indemnités

dues en vertu de la présente loi, aura porté atteinte ou tenté de porter atteinte au droit de la victime de choisir son médecin; 4o tout médecin ayant, dans des certificats délivrés pour l'application de la présente loi, sciemment dénaturé les conséquences des accidents.

Art. 31.—Les chefs d'entreprise sont tenus, sous peine d'une amende de 1 à 15 francs, de faire afficher dans chaque atelier la présente loi et les règlements d'administration relatifs à son exécution.

En cas de récidive dans la même année, l'amende sera de 16 à 100 francs.

Les infractions aux dispositions des articles 11 et 31 pourront être constatées par les inspecteurs du travail.

Art. 32.—Il n'est point dérogé aux lois, ordonnances et règlements concernant les pensions des ouvriers, apprentis et journaliers appartenant aux ateliers de la marine et celles des ouvriers immatriculés des manufactures d'armes dépendant du ministère de la guerre.

Art. 33.—La présente loi ne sera applicable que trois mois après la publication officielle des décrets d'administration publique qui doivent en régler l'exécution.

Art. 34.—Un règlement d'administration publique déterminera les conditions dans lesquelles la présente loi pourra être appliquée à l'Algérie et aux colonies.

LOI DU 30 JUIN 1899,

Concernant les accidents causés dans les exploitations agricoles par l'emploi de machines mues par des moteurs inanimés.

Article unique. — Les accidents occasionnés par l'emploi de machines agricoles mues par des moteurs inanimés et dont sont victimes, par le fait ou à l'occasion du travail, les person-

nes quelles qu'elles soient, occupées à la conduite ou au service de ces moteurs ou machines, sont à la charge de l'exploitant du dit moteur.

Est considéré comme exploitant l'individu ou la collectivité qui dirige le moteur ou le fait diriger par ses préposés.

Si la victime n'est pas salariée ou n'a pas un salaire fixe, l'indemnité due est calculée, selon les tarifs de la loi du 9 avril 1898, d'après le salaire moyen des ouvriers agricoles de la commune.

En dehors du cas ci-dessus déterminé, la loi du 9 avril 1898 n'est pas applicable à l'agriculture.

LOI DU 12 AVRIL 1906,

Etendant à toutes les exploitations commerciales les dispositions de la loi du 9 avril 1898 sur les accidents du travail.

Art. 1er.—La législation sur les responsabilités des accidents du travail est étendue à toutes les entreprises commerciales.

Art. 2.—A partir de la promulgation du décret prévu à l'article 4 et pendant les trois mois qui suivront, les contrats d'assurance contre les accidents, souscrits antérieurement à cette promulgation pour des entreprises visées à l'article 1er et ne garantissant pas le risque prévu par les lois des 9 avril 1898, 22 mars 1902 et 31 mars 1905, pourront être dénoncés par l'assureur ou par l'assuré.

La dénonciation s'effectuera, soit au moyen d'une déclaration au siège social ou chez l'agent local, dont il sera donné récépissé, soit par acte extrajudiciaire, soit par lettre recommandée; le contrat se trouvera ainsi intégralement résilié le dixième jour, à midi, à compter du jour de la déclaration, de la si-

gnification de l'acte extrajudiciaire ou du dépôt à la poste de la lettre recommandée.

Les primes restant à payer ne seront acquises à l'assureur qu'en proportion de la période d'assurance réalisée jusqu'au jour de la résiliation. Les primes payées d'avance pour assurances à forfait ne lui resteront acquises, et seulement jusqu'à concurrence de six mois de risque au maximum à compter du jour de la résiliation, que si le contrat n'a pas été dénoncé par lui; le surplus sera restitué à l'assuré.

Art. 3.—Les contrats mixtes par lesquels l'assureur s'est engagé, d'une part, à garantir l'assuré contre le risque de la loi de 1898, si celle-ci était déclarée applicable, et, dans le cas contraire, à le couvrir du risque de la responsabilité civile, seront intégralement résiliés, s'ils ont été dénoncés dans les formes et délais prévus à l'article précédent. Le dénonciation de l'assuré restera toutefois sans effet si, dans la huitaine de cette dénonciation, l'assureur lui remet un avenant garantissant expressément, sans aucune augmentation de prime, le risque défini par les lois des 9 avril 1898, 22 mars 1902 et 31 mars 1905.

A l'expiration du délai de trois mois visé à l'article précédent, le silence des deux parties aura pour effet, sans autres formalités, de rendre le contrat applicable au risque déterminé par les lois des 9 avril 1898, 22 mars 1902 et 31 mars 1905.

Art. 4.—La taxe prévue par l'article 25 de la loi du 9 avril 1898 continuera à être perçue pour les exploitations assujetties par ladite loi, y compris tous les ateliers.

Elle sera réduite à un centime et demi pour les exploitations exclusivement commerciales, y compris les chantiers de manutention ou de dépôt. La liste desdites exploitations sera arrêtée dans les six mois de la promulgation de la présente loi par décret rendu sur la proposition des ministres du commerce

(du travail et de la prévoyance sociale) et des finances, après avis du comité consultatif des assurances contre les accidents du travail. Elle sera soumise tous les cinq ans à la sanction législative.

Des décrets rendus dans la même forme pourront modifier le taux de la taxe spécifiée à l'alinéa précédent, dans les limites du maximum prévu à l'article 25 de la loi du 9 avril 1898 ou fixé par la loi de finances; ils devront être publiés au *Journal officiel* au moins trois mois avant l'ouverture de l'exercice à partir duquel la modification deviendrait applicable.

Art. 5.—Les exploitations régies par les lois du 9 avril 1898 et du 30 juin 1899, qui ne sont pas soumises à l'impôt des patentes, contribueront au fonds de garantie dans les conditions ci-après.

Il sera perçu annuellement sur chaque contrat d'assurance une contribution dont le montant sera fixé tous les cinq ans par la loi des finances en proportion des primes, et sera recouvré, en même temps que les primes, par les sociétés d'assurances, les syndicats de garantie ou la Caisse nationale d'assurances en cas d'accidents, qui en opéreront le versement au fonds de garantie.

(L. 26 mars 1908.) "En ce qui concerne les exploitants non assurés, il sera perçu une contribution dont le taux sera fixé dans les mêmes formes, en proportion du capital constitutif des rentes mises à leur charge. Cette contribution sera liquidée lors de l'enregistrement des ordonnances, jugements et arrêts allouant lesdites rentes et recouvrée comme en matière d'assistance judiciaire, pour le compte du fonds de garantie, par l'administration de l'enregistrement.

Le capital constitutif de la rente sera déterminé, pour la perception de la contribution, d'après un barème et dans les conditions qui seront fixées par un règlement d'administration publique.

Les ordonnances, jugements et arrêts allouant des rentes, en exécution de la loi du 9 avril 1898, devront indiquer si le chef d'entreprise est, ou non, assuré et patenté."

Un règlement d'administration publique déterminera les conditions dans lesquelles seront effectués les versements des sociétés d'assurances, des syndicats de garantie ou de la Caisse nationale d'assurance en cas d'accidents et les recouvrements de l'administration de l'Enregistrement, ainsi que toutes les mesures nécessaires pour assurer l'exécution du présent article.

Toute contravention aux prescriptions de ce règlement sera punie d'une amende de cent francs à mille francs (100 fr. à 1000 fr.).

Art. 6.—Les syndicats de garantie prévus à l'article 24 de la loi du 9 avril 1898 doivent, qu'il s'agisse d'entreprises industrielles ou commerciales, comprendre au moins 5000 ouvriers assurés et 10 chefs d'entreprises adhérents, dont 5 ayant au moins 300 ouvriers, ou bien 2,000 ouvriers assurés et 300 chefs d'entreprises adhérents, dont 30 ayant au moins chacun 3 ouvriers.

Ces syndicats sont autorisés par décrets rendus en Conseil d'Etat, après avis du comité consultatif des assurances contre les accidents du travail. Ils peuvent être autorisés par arrêtés ministériels, lorsque leurs statuts sont conformes à des statuts-types approuvés par décret rendu en Conseil d'Etat, après avis du comité susvisé.

Art. 7.—Un règlement d'administration publique déterminera les conditions dans lesquelles la présente loi pourra être appliquée à l'Algérie et aux colonies.

Art. 8.—La présente loi entrera en vigueur trois mois après la promulgation du décret prévu au deuxième alinéa de l'article 4.

LOI DU 18 JUILLET 1907,

Ayant pour objet la faculté d'adhésion à la législation des accidents du travail.

Art. 1er.—Tout employeur non assujetti à la législation concernant les responsabilités des accidents du travail peut se placer sous le régime de ladite législation pour tous les accidents qui surviendraient à ses ouvriers, employés ou domestiques, par le fait du travail ou à l'occasion du travail.

Il dépose à cet effet à la mairie du siège de son exploitation ou, s'il n'y a pas exploitation, à la mairie de sa résidence personnelle, une déclaration dont il lui est remis gratuitement récépissé et qui est immédiatement transcrite sur un registre spécial tenu à la disposition des intéressés. Il doit présenter en même temps un carnet destiné à recevoir l'adhésion de ses salariés, sur lequel le maire appose son visa en faisant mention de la déclaration et de sa date.

Les formes de la déclaration et du carnet sont déterminées par décret. Le carnet doit être conservé par l'employeur pour être, le cas échéant, représenté en justice.

Art. 2.—La législation sur les accidents du travail devient alors de plein droit applicable à tous ceux de ses ouvriers, employés ou domestiques, qui auront donné leur adhésion, signée et datée en toutes lettres par eux, au carnet prévu par l'article précédent.

Si l'ouvrier, employé ou domestique, ne sait ou ne peut signer, son adhésion est reçue par le maire, qui la mentionne sur le carnet. Il en est de même pour l'adhésion des mineurs et des femmes mariées, sans qu'ils aient besoin, à cet effet, de l'autorisation du père, tuteur ou mari.

Art. 3.—L'employeur peut, pour l'avenir, faire cesser son

assujettissement à la législation sur les accidents du travail par une déclaration spéciale à la mairie. Cette déclaration, dont il lui est immédiatement donné récépissé, est transcrite sur le registre visé à l'article 1er, à la suite de la déclaration primitive, ainsi que sur le carnet.

La cessation d'assujettissement n'a point effet vis-à-vis des ouvriers, employés ou domestiques qui ont accepté, dans les formes prévues à l'article précédent, d'être soumis à la législation sur les accidents du travail.

Art. 4.—Si l'employeur n'est point par ailleurs obligatoirement assujetti à la législation sur les accidents du travail, il contribue au fonds de garantie dans les conditions spécifiées par l'article 5 de la loi du 12 avril 1906.

APPENDIX B

THE WORKMEN'S COMPENSATION ACT, 1906.

(6 EDW. VII. C.58)

An Act to Consolidate and Amend the Law with respect to Compensation to Workmen for Injuries suffered in the course of their Employment.

SECTION I.

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.

(*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 his 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, unless the injury results in death or serious and permanent disablement, 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 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.

(4) If within the time hereinafter 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

subsection, 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 deductions 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, factories, or workshops, or the application of any such fine.

SECTION II.

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 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.

SECTION III.

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 contribution by the workmen the scheme confers benefits at

least equivalent to those contributions, in addition to the benefits to which the workman 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.

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.

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 subsec. 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 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.

SECTION IV.

1. Where any person (in this section referred to as the principal) in the course of and 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 compensa-

tion 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.

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.

3. Nothing in this section shall be construed as preventing a workman recovering compensation under this Act from the contractor instead of the principal.

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.

SECTION V.

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 insurer shall not be under any greater liability to the workman than they would have been under to the employer.

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.

3. There shall be included among the debts which under sec. 1 of the Preferential Payments in Bankruptcy Act, 1888, and sec. 4 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 wnding 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 to a miner or the dependants of a miner, shall have the like priority as is conferred on wages of miners by sec. 9 of that Act and that section shall have effect accordingly.

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.

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.

SECTION VI.

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, or, by consent of the parties, by arbitration under this Act.

SECTION VII.

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:—

(*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 commnced on board the ship it shall not be necessary to give any notice of the accident;

(*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;

(*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 691 and 695 of the Merchant Shipping Act, 1894, and those sections shall apply accordingly;

(*d*) In the case of the death of a master, seaman, or ap-

prentice, 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;

(*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 sec. 503 of the Merchant Shipping Act, 1894 (which relates to the limitation of the ship-owner'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.

(*g*) Subsecs. 2 and 3 of sec. 174 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;

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 the pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

SECTION VIII.

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;

(*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.

(*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;

(*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;

(*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 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.

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.

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.

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.

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.

SECTION IX.

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 sec. 1 of the Super-annuation 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.

SECTION X.

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.

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.

SECTION XI.

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. Sec. 692 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.

SECTION XII.

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.

SECTION XIII.

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 £250 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, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister;

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"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;

"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;

"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.

SECTION XIV.

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.

SECTION XV.

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.

SECTIONS XVI AND XVII.

16. 1. This Act shall come into operation on the first day of July, 1907, 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.

2. The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply in cases where the accident happened before the commencement of this Act, except to the extent to which this Act applies to those cases.

17. This Act may be cited as the Workmen's Compensation Act, 1906.

SCHEDULE I.

(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, which ever 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;

(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—

(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 not exceeding 50 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;

And—

(*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, 100 per cent. shall be substituted for 50 per cent. of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings.

(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 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 earnings.

(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.

(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.

(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:

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.

(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.

(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.

(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.

(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.

(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 statutes or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(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 para. (4) or para. (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 appplication 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.

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.

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.

(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 50 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.

(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 75 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.

(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.

(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.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

(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 subsection of sec. 8, sec 16, and sec. 41 of the Friendly Society Act, 1896, shall not apply to such society in respect of such scheme.

(22) 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 Banks under this Act.

SCHEDULE II.

(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.

(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.

(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.

(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 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.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this Act of any party by some other person.

(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.

(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.

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—

(*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.

(11) When 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.

(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, 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.

(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.

(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.

(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 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 provisos (*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 para. 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 authorized 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.

SCHEDULE III.

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 o rits 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 mercury or its preparations or compounds.
Ankylostomiasis.	Mining.

Where regulations or special rules made under any Act of Parliamtnt 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.

APPENDIX C

COMPOUND DISCOUNT TABLE.

ONE DOLLAR PER ANNUM.

The present value of an annuity of one dollar (annuity payable at the end of each year), for any number of years, not exceeding forty, discounting at the rate of 3, 3½, 4, 4½, 5, 6, and 7 per cent. compound interest.

Yrs.	3 per cent.	3½ per cent.	4 per cent.	4½ per cent.	5 per cent.	6 per cent.	7 per cent.
1	971	966	962	957	962	943	935
2	1 913	1 899	1 886	1 873	1 859	1 833	1 808
3	2 829	2 801	2 775	2 749	2 723	2 673	2 624
4	3 717	3 673	3 630	3 588	3 546	3 465	3 387
5	4 580	4 515	4 452	4 390	4 329	4 212	4 100
6	5 417	5 328	5 242	5 158	5 076	4 917	4 767
7	6 230	6 114	6 002	5 893	5 786	5 582	5 389
8	7 020	6 874	6 733	6 596	6 463	6 210	5 971
9	7 786	7 607	7 435	7 269	7 108	6 802	6 515
10	8 530	8 316	8 111	7 913	7 722	7 360	7 024
11	9 253	9 001	8 760	8 529	8 306	7 887	7 499
12	9 954	9 663	9 385	9 119	8 863	8 384	7 943
13	10 635	10 302	9 986	9 683	9 394	8 853	8 358
14	11 296	10 920	10 563	10 223	9 899	9 295	8 745
15	11 938	11 517	11 118	10 740	10 380	9 719	9 108
16	12 561	12 094	11 652	11 234	10 838	10 106	9 447
17	13 166	12 651	12 166	11 704	11 274	10 477	9 763
18	13 754	13 189	12 659	12 160	11 690	10 828	10 059
19	14 324	13 709	13 134	12 593	12 085	11 158	10 366
20	14 877	14 212	13 590	13 008	12 462	11 470	10 594
21	15 415	14 698	14 029	13 405	12 821	11 764	10 836
22	15 937	15 167	14 451	13 784	13 163	12 042	11 064
23	16 444	15 620	14 857	14 148	13 489	12 303	11 272
24	16 936	16 058	15 247	14 495	13 799	12 550	11 469
25	17 413	16 481	15 622	14 828	14 094	12 783	11 654
26	17 877	16 890	15 983	15 147	14 375	13 003	11 826
27	18 327	17 285	16 330	15 451	14 643	13 210	11 987
28	18 764	17 667	16 663	15 745	14 898	13 406	12 137
29	19 188	18 035	16 984	16 022	15 141	13 591	12 278
30	19 600	18 392	17 292	16 289	15 372	13 765	12 409
31	20 000	18 736	17 588	16 544	15 593	13 929	12 532
32	20 389	19 068	17 874	16 789	15 803	14 084	12 647
33	20 766	19 390	18 148	17 023	16 003	14 230	12 754
34	21 132	19 700	18 411	17 247	16 193	14 368	12 854
35	21 487	20 000	18 665	17 461	16 374	14 498	12 948
36	21 832	20 290	18 908	17 666	16 547	14 621	13 035
37	22 067	20 570	19 143	17 862	16 711	14 737	13 117
38	22 492	20 841	19 368	18 050	16 868	14 846	13 193
39	22 808	21 102	19 584	18 230	17 017	14 949	13 265
40	23 115	21 355	19 793	18 402	17 159	15 046	13 332

1. To find the value of a given amount to be received at the end of EACH YEAR during any number of years, not exceeding forty, at any of the rates of compound discount given in the above table: Multiply the given amount to be received at the end of each year by the present value of ONE DOLLAR per annum at the rate and number of years required, and mark off as many decimals from the product as there are decimals in the multiplier and multiplicand.

2. Given, the present value, the rate, and the payment, to find the time. Divide the present value by the payment, to find the present value of an annuity of $1 for the given rate and required time; the time corresponding to this quantity in the Table will be the required time. If the number obtained by division is not in the Table, take the number of years corresponding to the next one below it, and find the balance remaining by taking the difference between the compound amount of the present value and the final value of the payment for the number of years found by the Table.

APPENDIX D

Duration of Annual Rent (payable quarterly) at 3½%, the Present Value and Rent being given.

Value	$500	$600	$700	$800	$900	$1000	$1200	$1400	$1600	$1800	$2000
Rent	y. d.	y. d.	y. d.	y. d.	y. d.	y. d.	y. d.	y. d.	y. d.	y. d.	y. d.
$100	5 189	6 276	8 18	9 149	10 303	12 119	15 208	19 80	23 145	28 100	34 51
150	3 205	4 119	5 41	5 337	6 276	7 224	9 149	11 117	13 134	15 208	17 346
175	3 8	3 244	4 119	4 364	5 252	6 145	7 315	9 149	11 132	12 280	14 221
200	2 230	3 67	3 274	4 119	4 333	5 189	6 276	8 18	9 149	10 303	12 119
250						4 119	5 100	6 93	7 97	8 116	9 149
300						3 205	4 119	5 41	5 337	6 276	7 224
350						3 8	3 244	4 119	4 364	5 252	6 145
400						2 230	3 67	3 274	4 119	4 333	5 189

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