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COMPENSATION FOR INJURIES TO CANADIAN WORKMEN.

CHAPTER I.

INTRODUCTION.

In the modern world there has been no greater development along any line than the growth of our vast industrial system. In that world of industry itself there is no more serious problem than the adjusting of the relations between the capitalistic and the labouring classes. In fact, Viscount Bryce has called this problem the greatest unfinished enterprise of the world. This essay does not attempt to deal with the causes, the consequences or the solution of our industrial problem. This discussion is concerned only with measures for the securing of fair and adequate compensation for the worker who is injured or killed in the course of his employment; the Canadian situation is our field for special study.

(1) *Labour in Industry.*

The tendency to look upon the labouring man as a mere chattel in industry is rapidly passing away; there is a general admission to-day not only that labour is a vital necessity in all industrial endeavour, but also that it must be conserved, protected and inspired to its best life. It is agreed that society is held together by the laws of social solidarity; the interests of all classes are bound together in the general welfare of the community's life; the epidemics that were once tolerated because they existed in the slums soon spread to the mansions on the boulevard; the laws of physical and moral contagion have shewn us that they do not recognize our social distinctions; it is impossible for society or one class of society to rise while one social group is held down by unjust and unnecessary limitations. It is further agreed that labour has made a vast and indispensable contribution to our

industrial development; the products of industry are all composite structures and the labouring man can look upon them and justly claim that not merely his muscle, but also his brain, his skill and his sagacity have entered into their creation. It is only to be expected, therefore, that the working man, when accidentally injured or killed, should receive a large and increasing share of attention.

(2) *The Old Rule of English Common Law Regarding Common Employment.*

Common law is a general term used to designate "those maxims, principles and forms of judicial proceeding which have no written law to prescribe or warrant them, but which, founded on the laws of nature and the dictates of reason, have become interwoven with the written laws and form a part of the municipal code of state or nation" (1).

The common law prevailed in England and so has entered largely into the legal system of the United States and Canada. According to the English practice when one man injured another he became liable for the resulting damages. In case an employee was injured through the negligence or carelessness of his employer the same conditions prevailed and the employer was held responsible. "Negligence," as used in this connection, has been defined as "the absence of that amount of care which each man in this our social state owes his fellows" (2).

From this principle of personal responsibility there developed the doctrine known as "common employment." Whether or not the employee had any legal claim for damages when he was injured, not by the negligence of his employer, but by that of his fellow-workman, was not tested in the English courts until 1837. The servant of a butcher was riding in a van which was not under his control; because the van had been too heavily loaded by the negligence of a fellow-servant it broke down and injured the workman who was riding. He brought suit to compel the payment of damages by his employer but failed, in the now celebrated case of *Priestly v. Fowler* (3). The fact that the accident was caused by the fault of a fellow employee was proven, but the Court decided that no action could be maintained against the employer.

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(1) American and English Encyclopedia of Law, 2nd Edition.
(2) Augustine Birrell: "Four Lectures on the Law of Employers' Liability." 1897.
(3) 3 M. & W. 1.

This case and its decision led to the establishment of the following principle of common law:—"A servant, when he engages to serve a master, undertakes as between himself and his master to run all the ordinary risks of the service, including the risk of negligence upon the part of a fellow-servant when he is acting in the discharge of his duty as servant of him who is the common master of both." In this way there was established "The Doctrine of Common Employment," which was later adopted by the Courts of the United States, but rejected by those of Germany and France. Under the operation of this rule it was established beyond controversy that "every risk which an employment still involves after a master has done all that he is bound to do for securing the safety of his servants is assumed, as a matter of law, by each of those servants." It had also been held that wher accidents were due to known risks, even though caused by the master's negligence, they were not generally actionable.

There was, of course, much to be said in favour of this principle when it was first laid down; under its operation injustice was not done so frequently as it would be under the complicated industrial system to-day. In modern industry there is a much larger proportion of accidents that could not be foreseen; under the above principle of common employment the employer would in all such cases be left free from responsibility and the employee would receive no compensation for an accident that was not his own fault. It should be noted that in Lord Abing r's careful and elaborate argument in the famous case of *Priestly* v. *Fowler*, he drew all his comparisons from domestic service and not from industry; industrial life as we know it was foreign to his mind (4).

(3) *Employers' Liability Acts.*

The prevalence of the doctrine of common employment and of assumed risks may be called the first stage in the development towards the present; the adoption of the so-called Employers' Liability Acts would constitute the second stage.

In 1880 in England, the Employers' Liability Act was passed. This Act did not do away entirely with the doctrine of common employment, but in five specified cases it did practically secure its abrogation. These cases were specified as those in which there was any defect in the plant, etc., or any neglect on the part of a superintendent, fellow-servant or signalman for which the employer was responsible.

(4) "The Green Bag," v. 18: p. 185 f.

On this continent a similar change took place and gradually Employers' Liability Acts have come into operation in practically all the States and Provinces.

Because several Provinces of Canada still have liability acts in operation we may consider here the objections to their method of awarding compensation.

(a) It is an uncertain and vague method. It has been found to be impossible to determine the exact duty of an employer to his workmen. Such a maze of technicalities and subtle distinctions has been developed that even a widely experienced lawyer is unable to tell with any certainty what will be the outcome of his case.

(b) It breeds an antagonism between employers and their employees. This is the universal testimony of those who have had to do with employers' liability cases.

(c) It is wasteful in the costs of litigation and produces only small and uncertain compensation for the workman. An investigation was made of the expense incurred in 1907 by 327 firms in New York State for the defending or appealing of accident cases and the payment of awards. These firms employed close to 126,000 men. During the year they paid out on the general account of accidents $195,538.00. This went for accident awards, accident insurance premiums and legal expenses. The part of this which reached the injured persons was $104,643.00, or less than 54% (5).

(4) *Compensation Legislation.*

In the third stage of development a step is taken beyond a mere attempt to fix the responsibility for an accident: it is laid down as a principle in this type of legislation that the workman is entitled to compenastion for his injury regardless of its cause and means are provided for paying him an adequate amount; the only exceptions to the above principle are when the accident is caused by the workman's own serious and wilful misconduct.

It was soon found in Great Britain that the Liability Act of 1880 had not solved the problem: indeed, Mr. Asquith (6), has described the act as "an elaborate system of traps and pitfalls for the unwary litigant" and as "a scandalous reproach to the Legislature." In 1897 an Act was passed which did away with the previous doctrine of common employment: it was amended into

(5) See "Labour Gazette," Bureau of Labour (Canada), vol. 10: 683 ff. General references:—Bailey, W. F.—"Treatise of Law of Personal Injuries;" Beven, Thos.—"Law of Employers," "Liability and Workmen's Compensation;" Boyd, J. H.—"Treatise on Law of Compensation."

(6) "Political Science Quarterly," v. 17: p. 256 f.

the Act of 1900 and later into that of 1907, which is now in force. The present law may be summarized, in its leading features, as follows (7):—

All injuries are compensated provided: (a) they last at least one week in preventing the earning of full wages, (b) occurred as result of an accident arising out of and in the course of the employment and (c) were not caused by the serious and wilful misconduct of the workman, unless resulting in death or serious and permanent disablement. Any employment is covered and any employee provided he earns less than a fixed sum. The employer bears all the cost and the amounts payable are fixed according to the time and nature of the injury.

It is Germany, perhaps more than any other country, to which we must look for the most complete development of workmen's insurance. With the introduction of railways the problem of industrial accidents and the need for compensation were accentuated in Germany. Fortunately the law-making bodies did not leave the jurists to create a fellow-servant doctrine and to establish vague standards of liability for employers. Railway construction was barely under way when the Prussian Government in 1838 passed legislation which placed upon the shoulders of every railway company full liability for injuries to its employees as well as to its passengers. The only loophole for the employer was to prove that the accident was due to the negligence of the injured employee or to an act of Providence. The law definitely provided that Providence should not be forced to bear an intolerable part of the burden by saying specifically that the mere existence of risks did not render accidents inevitable, or, presumably, providential (8).

In 1871 the German Empire was formed and the Prussian Act became expanded into the legislation of a great Empire in regard to railways. Immediate agitation arose looking to the extension of the principle of the early legislation to all forms of industry.

By the year 1884 the adroit Bismarck had decided that the one certain way to counteract the rising socialistic movement was to adopt its measures and promulgate them in legislation. Emperor William I. and the economists lent their aid and in that year the Workmen's Compensation Law was passed: it is, we may note, but one-third of a comprehensive programme of social legislation, the other two providing for insurance against sickness and old age. This law made the employer responsible for any accident to an

(7) U. S. Dept. Labour Statistics, No. 126, page 149.
(8) See Dawson, W. H.—"Social Insurance in Germany."

employee in the course of his employment except such as should be caused by the wilful misconduct of the victim himself. This sole exception is all that remains in Germany of the law of negligence; it is the vermiform appendix in German industrial insurance. Even Providence is no longer a last resort for the employer (9).

The German law compels all employers to form associations in the various industrial branches, to manage these associations under close Government supervision and to assess the members for the amounts needed to administer the funds and pay the compensation. Medical and surgical treatment for 91 days and benefit payments from beginning of fourth to ninety-first day are provided by sick-benefit funds, to which employers contribute one-third and employees two-thirds; from beginning of twenty-ninth to ninety-first day payments are increased by one-third at expense of employer in whose establishment accident occurred; after ninety-first day, and in case of death from injuries, expense is borne by employers' associations supported by contributions of employers. The amount of compensation and the terms of settlement are carefully fixed (10).

In the United States the present century, roughly speaking, has been marked by investigation and legislation along the line of compensation rather than liability laws.

The first legislation providing for stated benefits without suit or proof of negligence took the form of a co-operative insurance law of Maryland in 1902. It affected only a few occupations and was declared unconstitutional on the ground that it took away the right of jury trial and conferred upon an executive officer functions that were at least quasi-judicial. In 1905 the United States Philippine Commission passed an enactment authorizing the continuance of wages for a period not exceeding 90 days during disability for employees of the insular Government injured in the line of duty.

In 1908 the United States Congress passed a law "granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of employment."

Between the years 1908 and 1913, a total of twenty-eight jurisdictions (including States, the Federal Government and Porto Rico) appointed commissions to investigate the subject and

(9) It has since been provided that the award may be refused or reduced if the workman was injured while committing an illegal act.

(10) See summary of Act in Bull. Bur. Lab. Stat. U. S. No. 126.

report. During the same period, twenty-four States put into force original laws along the line of compensation and seventeen others passed amendments to existing laws which were amendments in the direction of compensation (11).

(11) U. S. Bureau of Labour Statistics, 126, p. 12. Summaries of these and other laws may be seen in U. S. Bur. Lab. Stat., 126, p. 139 ff. Additional references in connection with this chapter:—Willoughby, W. F.—"Workmen's Insurance," "Quarterly Journal of Economics," v. 12, No. 4, p. 398 f. Henderson, C. R.—"Industrial Insurance in the United States." "Political Science Quarterly," v. 17, p. 256 f. "The Green Bag," v. 18, p. 185 f.

CHAPTER II.

WORKMEN'S COMPENSATION IN CANADA.

(1) *History of the Adoption of such Acts by the Various Provinces.*

The Province of Prince Edward Island has now no legislation dealing with compensation to injured workmen or the liability of employers.

ONTARIO.

The Province of Ontario has always taken, and still holds, a position of commendable leadership in regard to compensatory legislation for injured workmen. In the session of 1885, a compensation bill was introduced and had reached its second reading when an amendment was carried postponing the consideration of the bill for six months in order that the reports of the Imperial Commission dealing with the subject could be received.

In the following year the Imperial reports (1), were duly considered and an Act was passed (2), called "The Workmen's Compensation for Injuries Act, 1886." Its most salient features may be summarized as follows:—

The employer was made liable for accidents that were caused by any defect in machinery, etc., due to neglect to discover or repair or to any neglect on the part of a superintendent or anyone for whom the employer is responsible, or of a railway signalman. The amount of compensation was to be no greater than estimated earnings for three previous years, and certain exceptions were provided in the case of employers who had entered into arrangements for separate insurance, and provident societies whose rates came up to a certain fixed standard.

At the session of 1889 several important amendments were introduced. It was enacted that "superintendence" was to mean such general control over a workman as is exercised by a foreman, "whether the person exercising such superintendence is or is not ordinarily engaged in manual labor." This is, of course, a broadening, though very slight, of the old doctrine of the fellow-servant. Continuing in the employment of an employer with knowledge of dangerous conditions should not of itself constitute a voluntary assumption of the risk of injury.

(1) Sessional Papers, Ont. 1885, No. 56.
(2) 49 Vict., c. 28.

The original Acts and amendments were consolidated in the statutes of 1892 and were henceforth known as the Act of 1892 (3.

In 1900, Professor James Mavor, of the University of Toronto, presented to the Assembly an exhaustive report on Workmen's Compensation, which he had been asked to prepare (4). This report dealt at length with the British Workmen's Compensation Act of 1897 and also with accident insurance in Germany, France, Switzerland, Austria-Hungary, Italy and Russia. It is descriptive mainly, but finds in general that the German system of mutual liability is preferable to the English method where the liability is left upon the individual employer. No definite recommendations were made.

In 1893 an amendment was passed definitely excluding workmen in "husbandry, gardening or fruit-growing" from the operation of the Act (5).

Bills intended to amend the Act were introduced in the years 1907, 1909 and 1910, but voted down.

On June 30, 1910, a step was taken destined to have an important bearing upon the workmen's compensation movement in Canada. The Ontario Government appointed a commission of one, Sir William Meredith, to investigate the matter. The commission was set to do three things—to investigate Acts in operation in other countries, to make recommendations regarding the application of such legislation to Ontario, and to draft a bill for presentation to the Legislature. The commission made an interim report in 1912, another in 1913, and its final report in 1914, in which year the new Act was adopted. This Act is the first legislation introduced in Canada based upon the German system of mutual liability on the part of certain groups of employers. With certain amendments added in 1915, 1916 and 1917, the Act is considered in detail in section 2 of this chapter.

QUEBEC.

The Proceedings of the House of Assembly of Lower Canada and Quebec contain no reference to our subject until we reach the year 1907. In that year an Act was passed authorizing the organization of a commission to study the remedies most appropriate to labor accidents (6). As a result of this report an Act was passed in 1909 which has since been in force (7). Attempts

(3) Statutes of Ontario, 55 Vict., c. 30.
(4) Sessional Papers, Ont., 1900, No. 48..
(5) 56 Vict., c. 26.
(6) 7 Edw. VII., c. 5.
(7) Statutes Quebec, 9 Edw. VII., c. 66.

were made to amend it in 1912, but the proposed changes were voted down and measures were taken to discover what was desired in the way of amendments by those most intimately concerned. It was ordered that all documents, resolutions and correspondence that had passed between the Government and any interested person regarding proposed amendments should be presented to the House. These were brought down and printed (8). All parties seemed to agree in general that the Act had not been in operation long enough to determine its actual value, and that therefore any amendments would be premature. The Act is taken up in detail in section 2 of this chapter.

In 1915 a bill was passed forbidding any employer from retaining any part of a workman's wages to pay premiums on insurance policies issued against accidents (9). The preamble to this Act states that this practice was being resorted to and was causing serious inconvenience. The Act did not apply to railway employees who individually and in good faith take out such policies and give written orders to their employers to pay the premiums out of their wages or salaries.

MANITOBA.

In 1908 a bill was introduced by Mr. Mitchell. At its second reading the bill was referred to a committee and heard of no more. The next year Mr. Mitchell introduced another bill, which went through the same process, but the Select Committee on Law Amendments recommended that the bill proceed no farther and that a commission be appointed to report at the next session. This was done.

This commission presented its report at the session of 1910. The main recommendations (10), of the commissioner were:

(a) That the main burden for the compensation should be put upon the employer, and that he should be left to protect himself by liability insurance; the costs of this protection will, the report contends, be added to the selling price of the employer's product and so be paid by the public.

(b) That all employers of five men or more be included and Crown and municipal corporations be regarded as employers.

The Workmen's Compensation Act, 1910 (11), was the out-

(8) Sessional Papers, P.Q., 1912, No. 60.
(9) Quebec Statutes, 5 Geo. V., c. 71.
(10) Sessional Papers, Manitoba, 1910, No. 24.
(11) R.S.M., 10 Edw. VII., c. 81.

come of the bill introduced by the unfailing Mr. Mitchell as a result of the commission's report. Its chief points have been summarized above.

Two weeks' injury required. All accidents arising out of and in the course of the employment excepting the injury be for less than two weeks or caused by drunkenness.

Serious and wilful misconduct invalidates only a claim for partial incapacity, but claims for total and permanent incapacity and death are not so invalidated.

An attempt to rescue a fellow workman shall not be construed as misconduct. The Act was slightly amended in 1912.

In 1916 an entirely new Act became law, which is now in force and is considered in detail later.

New Brunswick.

The first employers' liability bill was introduced in the Legislature in 1902, but was referred to a standing committee and remained there. In 1903 there was enacted into law "An Act respecting the Liability of Employers." In introducing the bill Mr. Pugsley said that it was intended to exempt lumbermen and miners, the latter being excluded in order not to prevent capital coming into the province to develop a young industry. The bill did not yield, he said, to the "demands to make the employer liable for the negligence of a fellow servant who is not a foreman or entitled to give orders. We have, however, to this rule made two important exceptions. We have provided that where a workman is injured by the negligence of a man who has charge of signals or points on a railway—or who is in charge of a winch engine on board a ship that is being loaded—liability attaches." The Act created liability on the part of the employer for defective machinery or negligence on the part of a foreman. The sponsors for the bill claimed that it was in line with advanced legislation. Suggestions made in the House that cases be settled by arbitration were not accepted, and matters arising under the Act were left to the courts. Synoptic Reports of the Proceedings of the House for 1903 contain records of the debates.

The bill was slightly amended in 1907. The labour unions asked that the fellow-servant doctrine be abolished entirely, but this was refused on the ground that great injustice might be done; they asked that the danger to skilled labour from working with unskilled men be removed, but this was refused on the ground that the unions compel both classes to be accepted for employ-

ment; their request for an increase in the compensation was refused because they still had the privilege of resorting to the common law.

In 1908 the Act was amended so as to abolish the fellow-servant doctrine; the upper limit for compensation in case of death was placed at $2,500; "workmen" was defined so as to include pondmen, quarrymen and miners but casual workers, those not employed in the trade or business, clerks, seamen and fishermen were excluded. In 1912 granite and stone cutters were included under the Act.

In the year 1914 the original Act of 1903 and its amendments were consolidated and amended into "The Workmen's Compensation for Injuries Act," 3 Edward VII., c. 11, s. 1. An important amendment passed in 1916 gave the law its present form. This change removes the specifications regarding the circumstances under which the employer can be held responsible and provides that he shall be held to be liable when the accident occurred to the workman while in the discharge of his duty and arose out of and in the course of his employment. A special commission is now at work considering the introduction of a new law.

Nova Scotia.

The history of legislation in this province followed, until a few years ago, much the same lines as in the other provinces, namely, the adoption of an Employers' Liability Act and then a succession of amendments intended to make the law broader in application, easier of operation and more nearly just in its effects. This was found to be an impossible and inadequate method of dealing with the problem, and finally in 1915 there was passed the present law, which became operative on January 1st, 1917.

Alberta and Saskatchewan.

Until the year 1905 these provinces were known as the North-west Territories, and were administered under the auspices of the Dominion Government. During this time, instead of being under laws passed by elected legislative bodies, they were under ordinances passed by the Governor-General-in-Council. Insofar as these ordinances dealt with compensation they were modelled upon the provisions of the liability Acts. Not until the year in which the two new provinces were formed was an ordinance put forth which abolished the rule of the fellow-servant. Until these provinces passed compensation Acts for themselves they would, of

course, operate according to common law. Alberta enacted her law in 1908 and amended it in 1913 into its present form. Saskatchewan passed her law at the session of 1910-1911 and as amended in 1913, 1915 and 1916 constitutes the law now in force.

Yukon Territory.

This territory operates under Dominion ordinances. The regulations now in force were passed in their original form in 1908 and are found in the Consolidated Ordinances of the Yukon, 1914, ch. 29. They are modelled after employers' liability laws of a high type, the rule of fellow-servant being abolished.

(2) *An Analysis of Typical Canadian Acts.*

A. Employers' Liability Acts.

In two of the Canadian provinces the Acts now in force are what may be called Employers' Liability Acts; they fix the circumstances under which the employer can be held liable for accidents occurring to workmen, and provide that the injured employee can bring suit directly against his employer. These provinces are Quebec and Saskatchewan; the Quebec law is named "An Act Respecting Labour Accidents"; the other is to be cited as Workmen's Compensation Act (12). Their provisions can perhaps be most clearly set forth by an analysis according to a predetermined outline and a comparison of the most essential features under each topic. It will be impossible to quote the language of all the Acts in any detail, but the important provisions will be explained.

An analysis of Canadian Employers' Liability Acts according to:—

(*a*) Definition of Terms.

(1) Employer. The Quebec Act gives no definition. Saskatchewan adds any other person to whom the recognized employer may lend or hire the services of the workman and includes any municipality; also any body, corporate or incorporate, and legal representatives of a deceased employer.

(2) Dependents.

Saskatchewan—Such members of family as were or would have been wholly or in part dependent upon workman's earnings.

(12) Copies of these Acts may be had from the Provincial Secretary at Quebec, P.Q., and Regina, Sask.

"Members of a family" are then defined. Adopted child, foster parent, illegitimate children, and parents of such, are also included.

(3) Railway is not defined in Quebec, but in Saskatchewan includes a road carrying cars over metal rails and tramways and street railways.

(4) Saskatchewan gives lengthy and detailed definitions of a mine, a factory and an engineering work.

(*b*) Conditions Determining the Giving of Compensation.

(1) Regarding the accident itself.

Province of Quebec—"Accidents happening by reason of or in the course of their work to workmen, apprentices and employees" unless accident was intentional on part of the workman. 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.

Saskatchewan—"Personal injury by accident arising out of and in the course of the employment" and which results in disability of seven days or more. It is provided that the compensation shall be payable whether or not there was any negligence on the part of a fellow-workman, or negligence arising from any defect in the works, machinery, etc., or any contributory negligence or misconduct on the part of the workman or any incidental risks assumed by the workman.

(2) The Employments Affected.

Province of Quebec.—Included are workmen "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 any business having for its object the building, repairing, or maintenance of railways or tramways, waterworks, 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." Agriculture and sail-navigation are excluded.

Saskatchewan includes under the Act "employment by the principal on or in or about a railway, factory, mine, quarry or engineering work" and any building which is being constructed, repaired or demolished. Both provinces exclude from the operation of the Act any employment connected with agriculture, or any machinery, factory, mine or quarry upon a farm and connected only with the purposes of the farm. The actual employments

about a farm to which the Act shall not apply are specified in detail.

(3) Miscellaneous Conditions.

Province of Quebec.—Non-resident foreign workmen or dependents are excluded from the Act, but not from the common law remedy.

Any amount recovered by any plaintiff at common law shall apply against any liability of the employer under the Act.

Any amounts paid from an insurance company or benefit society shall reduce the employer's liability only when he has assumed the premiums or assessments. His liability continues also if the company or society neglects or is unable to pay.

(c) Scale of Compensation.

(1) In case of death.

Province of Quebec.—A sum equal to four times the average yearly wages at time of accident, to be no less than one thousand dollars, unless reduced because of the inexcusable fault of the workman, nor more than two thousand five hundred dollars unless increased because of the inexcusable fault of the employer. Twenty-five dollars or less also for medical and burial expenses.

(2) Total or partial incapacity.

Province of Quebec.—If the incapacity is absolute and permanent, a payment equal to fifty per cent. of yearly wages; if the incapacity is permanent and partial, the payment shall equal half the sum by which his wages have been reduced; for temporary incapacity, lasting more than seven days, a payment equal to half the daily wages.

The capital of these payments, unless they are increased because of the inexcusable fault of the employer, shall not exceed $2,500.

In Saskatchewan one section covers the amount of compensation in all cases. It is provided that the amount recoverable under the Act shall not exceed either the estimated earnings for three preceding years or $1,800, whichever is larger, and shall never exceed $2,000.

(3) Miscellaneous provisions as to the amount of compensation.

Province of Quebec.—If a man's wages exceed $800, only this amount is reckoned; the surplus up to $1,200 is reckoned at one-fourth the compensation provided for.

Apprentices are assimilated to the lowest paid workmen.

Wages include money, kind, average remuneration or wages in other work for workmen in discontinuous occupations.

Payments must be made in one month after settlement; capital for a rent may be paid to an insurance company; rents are payable monthly. In temporary incapacity, compensation is payable at the time for paying regular wages, at no greater intervals than sixteen days.

No sum can be deducted for compensation from wages.

(*d*) Procedure.

(1) Time Limits and Notices.

Province of Quebec.—One year is allowed for bringing action.

Saskatchewan.—Six months are allowed.

(2) Releases and "Contracting-Out."

Saskatchewan.—While, in the original Act, any contract by which a workman relinquishes any right to compensation was made void, an amendment was passed in 1917 providing that in case of death an agreement arrived at between the parties may be confirmed by the court.

(3) Medical Examinations.

Province of Quebec.—Medical examination is compulsory on the demand of the employer, but there is the additional provision that any examination demanded by employer shall be in the presence of a physician chosen by the employee.

(4) Sub-contracting.

In both provinces it is provided in general that the person for whom the work is being done is liable for accidents as if the workman had been employed by him.

(5) Action outside the Act.

In a general sense, the provinces agree in enacting that the civil liability of the employer is not affected by the Acts, and the employee can bring suit outside the Acts if he choose.

In each province a number of miscellaneous provisions are laid down to cover minor points which need not concern us now.

B. Mutual Compensation Laws.

We now come to consider a group of Canadian laws according to which the employer is liable to pay compensation, not directly to his injured workman or through a casualty insurance company, but through a collective fund to which he contributes along with other employers in the same line of business as himself. This is the German plan, and was first adopted by Ontario in 1914, the new law becoming operative on January 1, 1915; a similar law

came into force in Nova Scotia in 1915; and the British Columbia Act came into operation on January 1, 1917 (13).

In view of the fact that the original Ontario statute has been quite closely followed by the other provinces, the reader can best understand this important legislation by some quotations from the Ontario law; any part not clear on the surface will be explained and the particulars in which the legislation of other provinces differs from the Ontario standard will be pointed out. The analysis will follow the general outline used for the Acts already considered. All the Acts are to be cited as "The Workmen's Compensation Act." They are entitled "An Act to Provide Compensation to Workmen for Injuries Sustained and Industrial Diseases contracted in the course of their Employment."

(*a*) Definition of Terms.

Section 2 of the Ontario Act deals with this as follows:—

(1) "Accident" shall include a wilful and an intentional act, not being the act of the workman and a fortuitous event occasioned by a physical or natural cause.

This paragraph is omitted from the Nova Scotia Act.

(2) "Accident Fund" shall mean the fund provided for the payment of compensation, outlays and expenses under this Act in respect of Schedule 1;

(3) "Board" shall mean Workmen's Compensation Board;

(4) "Construction" shall include re-construction, repair, alteration and demolition;

(5) "Dependents" shall mean such of the members of the family of a workman as were wholly or partly dependent upon his earnings at the time of his death or who but for the incapacity due to the accident would have been so dependent.

The British Columbia Act provides that none shall be excluded because of being a non-resident alien.

(6) "Employer" shall include every person having in his service under a contract of hiring or apprenticeship, written or oral, express or implied, any person engaged in any work in or about an industry, and where the services of a workman are temporarily let or hired to another person by the person with whom the workman has entered into such a contract the latter shall be deemed to continue to be the employer of the workman whilst he is working for that other person.

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(13) The Provincial Secretaries at Toronto, Ont., Halifax, N.S., and Vancouver, B.C., provide copies of these Acts *gratis* to applicants. Since the preparation of this manuscript, Alberta and New Brunswick, in 1918, passed similar legislation.

Nova Scotia and British Columbia include municipal corporations and do not contain the provision for sub-employees.

(7) "Employment" shall include employment in an industry or any part, branch or department of an industry;

(8) "Industrial disease" shall mean any of the diseases mentioned in Schedule 3, and any other disease which by the regulations is declared to be an industrial disease;

(9) "Industry" shall include establishment, undertaking, trade and business.

British Columbia inserts "work."

(10) "Invalid" shall mean physically or mentally incapable of earning;

(11) "Manufacturing" shall include making, preparing, altering, repairing, ornamenting, printing, finishing, packing, assembling the parts of and adapting for use or sale any article or commodity;

(12) "Medical Referee" shall mean medical referee appointed by the Board.

Nova Scotia and British Columbia omitted (11) and (12).

(13) "Member of the Family" shall mean and include wife, husband, father, mother grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, and half-sister, and a person who stood in *loco parentis* to the workman or to whom the workman stood in *loco parentis*, whether related to him by consanguinity or not so related, and where the workman is the parent or grandparent of an illegitimate child, shall include such child, and where the workman is an illegitimate child shall include his parents and grandparents;

(14) "Outworker" shall mean a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, 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 articles or materials;

(15) "Regulations" shall mean regulations made by the Board under the authority of this Act;

(16) "Workman" shall include a person who has entered into or works under a contract of service or apprenticeship, written or oral, express or implied, whether by way of manual labour, or otherwise, but when used in Part I. shall not include an outworker, or a person engaged in clerical work and not exposed to the hazards incident to the nature of the work carried on in the employment, or an executive officer of a corporation.

The British Columbia Act defines "Physician" as one registered under the "Medical Act"; "Person" as including also females, and "Medical Aid" as that which the Board is authorized to provide. The word "Workman" is broadened so as to include those taking a course in mine-rescue work approved or directed by the employer: one engaged in rescue, etc., whether a workman or a volunteer under the employer's knowledge and consent and a person engaged in inspection.

(b) Conditions under which compensation may be given.

(1) Regarding the accident itself, the Ontario law says:—

Where in any employment to which this Part applies personal injury by accident arising out of and in the course of the employment is, after a day to be named by proclamation of the Lieutenant-Governor-in-Council, caused to a workman his employer shall be liable to provide or to pay compensation in the manner and to the extent hereinafter mentioned except where the injury:—

(a) Does not disable the workman for the period of at least seven days from earning full wages at the work at which he was employed, or

(b) Is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

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

Where compensation for disability is payable it shall be computed and be payable from the date of the disability.

This section shall not apply to 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.

Nova Scotia and British Columbia do not say "the employer shall be liable," but that "compensation as provided shall be paid." As to the waiting period of seven days, British Columbia reduces it to three, but provides that no compensation given shall include these three days except for medical aid.

(2) The Employments affected.

The following quotation is from the Nova Scotia Act. That of Ontario contains no such definition of the scope of the law:

"This Part shall apply to employers and workmen in or about the industries of lumbering, mining, quarrying, fishing, manufacturing, building, construction, engineering, transportation, opera-

tion of railway, telegraph, telephone, electric power lines, waterworks, sewers, and other public utilities, navigation, operation of boats, ships, tugs and dredges, stevedoring, operation of grain elevators and warehouses; teaming, scavenging and street cleaning; painting, decorating and renovating; dyeing and cleaning; the operation of laundries; or any occupation incidental thereto or immediately connected therewith; provided that, subject to special powers vested in the Board, this Part shall not apply to the following:—

"(a) Persons engaged in office or other clerical work, and not exposed to the hazards incident to the nature of the work carried on in the industry.

"(b) Persons whose employment is of a casual nature, and who are employed otherwise than for the purposes of the employer's trade or business.

"(c) Outworkers.

"(d) Persons employed by a city, town or municipal corporation as members of a police force, or of the fire department.

"(e) Members of the family of the employer."

The British Columbia Act adds to the list given above, "excavation, well-drilling, printing, tramways, lumber, wood or coal yards, steam-heating plants, power plants, gasworks, municipal police and fire departments, theatre stages, kinematographs, stockyards, ferries and horse-shoeing." Travelling salesmen are excepted along with those mentioned in sub-section (a) and, of course, sub-section (d) is omitted.

The Ontario law further provides that:—"the exercise and performance of the powers and duties of

"(a) a municipal corporation;

"(b) a public utilities commission;

"(c) any other commission or board having the management and conduct of any work or service owned by or operated for a municipal government;

"(d) the board of trustees of a police village;

"(e) a school board;

shall for the purposes of Part 1 be deemed the trade or business of the corporation, commission, board or school board, but the obligation to pay compensation under Part 1 shall apply only to such part of the trade or business as, if it were carried on by a company or an individual, would be an industry for the time being included in Schedule I or Schedule II. and to workmen employed in or in connection therewith."

(3) Miscellaneous provisions affecting the granting of compensation.

When an accident worthy of compensation happens while the workman is employed outside Ontario it is provided that compensation shall be given,

(a) If the place or chief place of business of the employer is situate in Ontario, and the residence and the usual place of employment of the workman are in Ontario, and his employment out of Ontario has lasted less than six months; or

(b) If the accident happens on a steamboat, ship or vessel, or on a railway, and the workman is a resident of Ontario, and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without Ontario.

Unless the employer has contributed fully to the accident fund he shall be individually liable for compensation in case of accidents beyond the Ontario boundary. In case the law of the country or place where the accident happened entitles the workman to compensation he must, by proper notice, within three months, elect under which law he will seek compensation.

Nova Scotia does not deal with the matter while British Columbia copies substantially the Ontario sections.

The Ontario law does not provide for payments to dependents who live elsewhere than in Ontario unless they live in a locality whose laws would allow compensation to dependents from that locality who might be living in Ontario: the amount allowed under this provision is not to be greater than the amount allowed under similar circumstances by the law of the other locality. In spite of this section the Board may make such an allowance if its members see fit. This section is embodied in substance in the Act of Nova Scotia, but is omitted from that of British Columbia. An injured workman receiving a periodical payment cannot move from Ontario unless his injury is likely to be permanent.

The employer himself can be reckoned as an employee and be entitled to compensation provided he is carried on the pay roll at a salary not above $2,000.00 yearly and that such salary is included in the last statement furnished to the Board: the compensation shall be fixed according to such salary or wages. A member of his family can become entitled to compensation under similar circumstances. These sections are not copied in the other laws.

(4) Industrial diseases are, in the same way as accidents, a cause for the granting of compensation, provided that they were contracted in the course of the employment and that certain precautions have been taken to determine the responsibility for the disease, as between the employer and the employee, and between several employers who may successively have employed the same workman.

The three laws classified industrial diseases according to the following schedule:—

Description of Disease.	Description of Process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiastis	Mining.

(*c*) Scale of Compensation.

(1) In case of death the Ontario law provides: (a) burial expenses up to $75.00; (b) to an invalid husband or a widow who is a sole dependent a monthly payment of $20.00; (c) if there are also children, there is allowed a payment, in addition to the $20.00, of $5 monthly for each child under 16, not exceeding $40.00 altogether; (d) if children only remain, $10 is paid monthly for each child under 16, not exceeding $40.00; (e) dependents other than these mentioned are compensated according to pecuniary loss determined by the Board, not to exceed $20.00 to parent or parents nor $30.00 in any case; these shall continue so long as the Board thinks the workman would have been a support had he lived; (f) total and partial dependents are compensated accordingly; (g) exclusive of burial expenses the compensation shall not in any case exceed 55 per cent. of the average earnings of the workman; (h) the re-marriage of a dependent widow causes the cessation of the monthly payments and the granting to her of a lump sum equal to two years' payments; (i) this last provision does not apply to payments in respect of a child, which cease only at 16 years or death; (j) when any one payment ceases, the remaining dependents shall receive what they would have received

had they been the only dependents at the time of the accident; (k) the medical and nursing attendance is provided for when no dependents remain; this provision is omitted from the Nova Scotia Act, which also omits (e), the provision that payments in respect to a child may be made to parties other than the parents if the Board so decides.

The British Columbia Act follows the above outline quite closely, but departs from it in these respects:—(a) an invalid child over 16 is classed with children under that age in awarding payments; (b) parents or a parent may be compensated up to $20.00 monthly provided that this must not bring the total compensation to more than $40.00; (c) the provision that limits the total payments to 55 per cent. of the average earnings of the deceased is struck out of this Act.

(2) In case of permanent total disability.

The Ontario law provides that the compensation shall be a weekly payment during the life of the workman equal to 55 per cent. of his average weekly earnings during the previous twelve months if he had been so long employed, but if not then for any less period during which he had been in the employment of his employer.

The Nova Scotia and British Columbia laws specify that the payment be periodical rather than weekly, and the latter Act provides that the payment shall not be less than $5.00 per week unless the workman earned less than $5.00 weekly, in which case the payment shall equal his wages.

(3) In case of permanent partial disability the law of Ontario says that the compensation shall be a weekly payment of 55 per cent. of the difference between the average weekly earnings of the workman before the accident and the average amount which he is earning or is able to earn in some suitable employment or business after the accident and the compensation shall be payable during the lifetime of the workman. In case the impairment of earning capacity is not greater than 10 per cent. the Board, in view of the workman's best interests, may use their discretion as to the granting of a lump sum equivalent to the weekly payment.

The British Columbia and Nova Scotia laws use the idea of substantial impairment instead of 10 per cent. or more.

(4) In case of temporary total disability the compensation allowed in Ontario and Nova Scotia is the same as for permanent and complete disablement, but payable only so long as the disability lasts. British Columbia makes it $5.00 weekly or more, as in the other case.

(5) In case of temporary partial disability the compensation is to be the same as for permanent partial disablement payable during the continuance of the disability. All Acts agree in this.

Careful provision is made for estimating the amount of earnings and so the consequent compensation.

(*d*) Constitution of the Board and Its Operation.

The Board in each case is called "The Workmen's Compensation Board," consists of three members, who are appointed by the Lieutenant-Governor-in-Council, is a body corporate, and each member shall give all his time to his duties. The following important provision is contained in the Ontario law, and, substantially, in the British Columbia measure (excepting the part regarding stocks, etc.), but omitted in Nova Scotia:—

A Commissioner shall not directly or indirectly: have, purchase, take or become interested in any industry to which this Part applies, or any bond, debenture or other security of the person owning or carrying it on; be the holder of shares, bonds, debentures or other securities of any company which carries on the business of employers' liability or accident insurance; have any interest in any device, machine, appliance, patented process or article which may be required or used for the prevention of accidents.

If any such industry, or interest therein, or any such share, bond, debenture, security, or thing comes to or becomes vested in a Commissioner by will or by operation of law and he does not within three months thereafter sell and absolutely dispose of it he shall cease to hold office.

The Board has powers similar to those of the Supreme Court regarding witnesses, documents, etc. The necessary officers to aid the Board in its work are appointed by the Board, which can also fix their salaries and terminate the appointments at will. The central offices are in Toronto for Ontario, Halifax for Nova Scotia, and Vancouver for British Columbia, with sittings allowable at other places as need may arise. In Ontario and Nova Scotia the Commissioners hold office during good behaviour or until reaching the age of 75 years, but may be removed for cause. In British Columbia, the appointments, after the first, are for ten-year periods.

As to the authority given to the Board, it is provided in Ontario that:—

(1) The Board shall have exclusive jurisdiction to examine into, hear and determine all matters and questions arising under Part 1 and as to any matter or thing in respect to which any

power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon shall be final and conclusive and shall not be open to question or review in any court, and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by *certiorari* or otherwise into any court.

(2) Without thereby limiting the generality of the provisions of sub-section 1, it is declared that such exclusive jurisdiction shall extend to determining:

(a) Whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 1, and if so, which of them;

(b) Whether any industry or any part, branch or department of any industry falls within any of the classes for the time being included in Schedule 2, and if so, which of them.

(c) Whether any part of any such industry constitutes a part, branch or department of an industry within the meaning of Part 1.

(3) Nothing in sub-section 1 shall prevent the Board from reconsidering any matter which has been dealt with by it or from rescinding, altering or amending any decision or order previously made, all which the Board shall have authority to do.

In Nova Scotia and British Columbia these general provisions are adopted and in addition certain questions of facts are specified as coming under the Board's decision, these are:—

(a) The question whether an injury has arisen out of or in the course of an employment within the scope of this Act.

(b) The existence and degree of disability by reason of any injury.

(c) The permanence of disability by reason of any injury.

(d) The degree of diminution of earning capacity by reason of any injury.

(e) The amount of average earnings.

(f) The existence of the relationship of husband, wife, parent, child, brother or sister as defined by this Act.

(g) The existence of dependency.

(h) The character, for the purpose of this Act, of any employment, establishment or department, and the class to which such employment, establishment or department should be assigned.

(i) Whether or not any employee in any industry within the scope of this Part is within the scope of this Part and entitled to compensation thereunder.

In Nova Scotia an appeal can be taken to the Supreme Court *in banco* from any final decision of the Board upon any question

as to its jurisdiction or upon any question of law, but such appeal can be taken only by permission of a Judge of the said Court, given upon a petition presented to him within fifteen days after the rendering of the decision, and upon such terms as the said Judge may determine. On the hearing of such an appeal any association interested may appear and be heard. The Board may state a case for the opinion of the Supreme Court *in banco* upon any question which in the opinion of the Board is a question of law.

The Boards must have their accounts properly audited, make annual reports, draw up suitable regulations and be responsible for the general conduct of the business.

(*e*) The Funds.

In Ontario the expenses of administration are provided out of the Consolidated Revenue up to $100,000, the amount each year being fixed by the Governor-in-Council. This leaves a large share of the receipts from assessments to be expended as compensation to workmen. In British Columbia a sum up to $50,000 may be paid by the province into the General Accident Fund to aid in meeting the cost of administration. In Nova Scotia the upper limit is set at $25,000.

"All employers in the industries in Schedule 1 are required, without notice, and subject to penalty in case of default, to prepare and transmit to the Board statements of the amount of wages paid and expected to be paid by them. Assessments are levied for such sums as are deemed necessary for each class of industry, and after receiving notice of assessment employers must transmit the amount to the Board in accordance with the terms of the notice. In case of failure to pay any assessment, judgment may be entered in the County or District Court, or other means of enforcing payment may be taken, and while in default the employer will also be liable for the compensation payable in respect of any accidents to workmen in his employ. If any employer is for any reason not assessed, he is nevertheless liable to pay the amount for which he should have been assessed. Audits of pay roll statements will be made by the officers of the Board from time to time, and errors in amount or classification or otherwise will be corrected."

As to the stability of the Fund, it is provided that:—"Where at any time there is not money available for payment of the compensation which has become due, without resorting to the reserves, the Board may pay such compensation out of the reserves and shall make good the amount withdrawn from the reserves by making a special assessment upon the employers liable to provide

the compensation or by including it in a subsequent annual assessment, or where it is for any reason deemed inexpedient to withdraw the amount required from the reserves the Lieutenant-Governor-in-Council may direct that the same be advanced out of the Consolidated Revenue Fund, and in that case the amount advanced shall be collected by a special assessment and when collected shall be paid over to the Treasurer of Ontario."

It is also the duty of the Board at all times to maintain the accident fund so that with the reserves, exclusive of the special reserve, it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened.

Subject to a section which provides for extra assessments when deemed necessary by the Governor-in-Council, it shall not be obligatory upon the Board to provide and maintain a reserve fund which shall at all times be equal to the capitalized value of the payments of compensation which will become due in future years unless the Board shall be of opinion that it is necessary to do so in order to comply with the provisions of the preceding paragraph.

It shall not be necessary that the reserve fund shall be uniform as to all classes but, subject to the requirements just mentioned, it shall be discretionary with the Board to provide for a larger reserve fund in one or more of the classes than in another or others of them.

Upon any industry in which accidents are too frequent the Board may place an extra assessment as long as the unfavorable conditions exist.

In British Columbia a special fund is provided for medical aid by retaining one cent daily from each man's wages. The other funds provided for are:—

(a) To meet all other amounts payable from the Accident Fund under this Part during the year;

(b) To provide a reserve by way of contingent fund in aid of industries or classes which may become depleted or extinguished;

(c) To provide in each year capitalized reserves sufficient to meet the periodical payments of compensation accruing in future years in respect of all accidents which occur during the year; and

(d) To provide a reserve fund to be used to meet the loss arising from any disaster or other circumstance which, in the

opinion of the Board, would unfairly burden the employers in any class.

These provisions are also in the Nova Scotia Act.

(*f*) Statements Furnished by Employers, etc.

At proper dates each employer must send to the Board a statement of the wages earned by all his employees during the preceding year, an estimate of such expenditures for the current year and any other information required; these are verified by a statutory declaration on the part of the proper official. If such a statement is not made the Board may make their own figures according to their own opinion. Separate statements may be called for various branches of one industry.

Any employer's books, accounts, etc., may be examined at any time, penalties imposed for obstructing or hindering such a search, and revisions of the assessments made according to the facts discovered. The premises can also be examined as to condition of the machinery and other conditions of work.

In general these provisions prevail in all the Acts.

The Acts agree in general in the following particulars:—

Every employer shall within three days after the happening of an accident to a workman in his employment by which the workman is disabled from earning full wages notify the Board in writing of the:—

(a) happening of the accident and nature of it;

(b) time of its occurrence;

(c) name and address of the workman;

(d) place where the accident happened;

(e) name and address of the physician or surgeon, if any, by whom the workman was or is attended for the injury;

and shall in any case furnish such further details and particulars respecting any accident or claim for compensation as the Board may require.

Ontario provides that for every contravention of the above the employer shall incur a penalty not exceeding $50.

The workman must make proper application for compensation and the attending physician make such reports as may be required.

(*g*) Assessments.

The Ontario law provides that for the first year there were to be such assessments upon the employers in each class as would provide for (a) the first year's claims for compensation, (b) expenses of administration and (c) a reserve fund to pay "the compensation payable in future years in respect of claims in that class for accidents happening in that year, of such an amount as the Board

may deem necessary to prevent the employers in future years from being unduly or unfairly burdened with payments which are to be made in those years in respect of accidents which have previously happened." In succeeding years the procedure is similar, allowing for any surplus or deficit from the preceding year. Supplementary assessments may be made if the amounts in hand are inadequate. Other provinces agree in these respects with Ontario.

When employers in some class default in payment the amount may be placed upon all the classes at the next assessment or a special reserve may be assessed for and set aside to meet such a contingency as this. This provision does not appear in the other Acts.

As to the employer who defaults in payment it is provided that he shall be liable to the Board for the capitalized value of any compensation made in respect of an accident that may happen to his employee, that the amount of assessment be enforced as a judgment of any court and that it can be collected by the clerk of the municipality as an addition to taxes. These are quite closely followed in the other Acts.

Temporary industries pay assessments according to the last preceding schedule.

(*h*) Classifications and Associations.

The industries of each province are divided into a certain number of classes, and as the Boards have authority to combine or subdivide classes, or to transfer industries from one to the other, these are not fixed and so will not be quoted at length here. Ontario began with 43 classes, Nova Scotia with 20, and British Columbia with 12.

Regarding associations of employers, the Ontario statute provides that employers in any of the classes included in the first schedule may form themselves into associations for accident prevention, make rules for the purpose, appoint inspectors, and the rules so drawn up can by the Board be made binding upon all employers in the class. Such a group of employers may appoint a committee of themselves to represent them and the Board may accept their certificate as to the compensation if satisfactory to the workman or dependents. Expenses of such associations may be paid out of the funds and assessed against the class.

The Nova Scotia Act contains in substance these provisions, but they are omitted from the law of British Columbia.

(*i*) Sub-contracting is a term used to designate the letting of a contract by a principal employer for the performing of part of a

work. In such cases the Ontario law is responsible for the compensation to employees of the sub-contractor in cases where the employer is made by law individually liable for the compensation: this applies only to accidents on the principal's premises: the principal is also responsible for the payments required of the sub-contractor for the accident fund.

The other two provinces have substantially these provisions in their Acts.

(*j*) Contracting Out. This is a term used to describe the substituting of some other benefit or accident scheme for the provisions of the law. The Ontario and British Columbia laws contain no sections dealing with this subject. The Nova Scotia Act provides that if the Board, after ascertaining the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favorable to the workmen than the provisions of the Act, the employer may, until the certificate is revoked, contract with any of these workmen that the provisions of the scheme shall be substituted for the provisions of the Act, and thereupon the employer shall be liable only in accordance with the scheme, but save as aforesaid, the Act was to apply notwithstanding any contract to the contrary made after the commencement of the Act.

The Board may give a certificate to expire at the end of a limited period of not less than five yeers, and may from time to time renew such a certificate.

If complaint is made to the Board by either party that satisfactory reasons exist for revoking the certificate, the Board may revoke the certificate.

These provisions are applicable only to the industries carried on in the Island of Cape Breton by the Dominion Steel Corporation and its subsidiary companies and the Nova Scotia Steel and Coal Company, Limited. No substitution of this nature is to be made unless the majority of the workmen to be affected ballot secretly in its favor.

In all these Acts, minor points are covered by specific regulations laid down in the laws themselves.

In Schedule 2 the Ontario Act names those industries in which the employer is individually liable for paying the compensation. These are:—

(1) The trade or business, as defined in the Act, of a municipal corporation, a public utilities commission, any other commission

having the management and conduct of any work or service owned by or operated for a municipal corporation, a board of trustees of a police village, and a school board.

(2) The construction or operation of railways operated by steam, electric or other motive power, street railways and incline railways, but not their construction when constructed by any person other than the company which owns or operates the railway.

(3) The construction or operation of car shops, machine shops, steam and power plants and other works for the purposes of any such railway or used or to be used in connection with it when constructed or operated by the company which owns or operates the railway.

(4) The construction or operation of telephone lines and works within the legislative authority of the Parliament of Canada, for the purposes of the business of a telephone company or used or to be used in connection with its business when contracted or operated by the company.

(5) The construction or operation of telegraph lines and works for the purposes of the business of a telegraph company or used or to be used in connection with its business when constructed or operated by the company.

(6) The construction or operation of steam vessels and works for the purposes of the business of a navigation company or used or to be used in connection with its business when constructed or operated by the company, and all other navigation, towing, operation of vessels, and marine wrecking.

(7) The operation of the business of an express company which operates on or in conjunction with a railway, or of sleeping, parlor or dining cars, whether operated by the railway company, or by an express, sleeping, parlor or dining car company.

These groups fall under the operation of Part II. of the Act. This is merely an employers' liability law of a broad and advanced type; it removes from the employer the two ordinary defences of common employment and the assumption of risks: it also provides that contributory negligence is no longer a bar to recovery, but only a ground for the reduction of damages. The statutes of the other provinces contain the same provisions.

In the law of Ontario sections are inserted in the first part providing, in the case of employers who are individually liable for the compensation, that the periodical payments may be commuted for a lump sum, that the employer shall be insured in a company approved by the Board, and the Board can require such com

panies to pay any awards to the Board by whom it is to be dispensed to the proper recipient (14).

C. The Compensation Act of Manitoba

This Act is reserved for consideration in a section by itself because in its fundamental features it can be classed with neither of the groups just considered. It is most akin to the Ontario legislation, but in its method of operation differs radically from that and allied laws (15).

The first seventy sections of the Act deal with the following subjects:—Interpretation and Definitions; Compensation; Conditions for its being granted and the amounts; the Workmen's Compensation Board and its operation; Contribution by the Province; Accident Fund.

These sections have evidently been drafted bodily from the Ontario Act with slight verbal changes to adapt them to Manitoba legislation and conditions. The only changes made that are worthy of note are: the compensation to be given for total disability is, unlike that in Ontario, not to be less than $6.00 weekly except in cases where the employee earns less than $6.00 weekly: in this case the compensation is to be the total amount of the weekly earnings instead of the 55 per cent. in other cases: in addition to compensation payable under the Act, the Board shall provide for the cost of medical attendance, nursing, care and maintenance, not to exceed $100.00, out of the Accident Fund, payable to the persons to whom it may be due; the Manitoba Board consists of one Commissioner instead of three, at a salary of $7,500 per year. Sections 80 and 80A of the Manitoba Act deal with Returns of Accidents and Industrial Diseases similarly to the Ontario law.

Sections 71 to 79 deal with the topics,—Statements and Policies to be Filed; administration Fund and Payment of Compensation. In this part of the law are to be found the unique features in Canadian legislation. The employer is required to prepare and forward to the Board each year a statement of all wages earned by his employees during the year just passed and an estimate for the current year. At the same time he must file with the Board "a policy of insurance in form satisfactory to the Board, issued by a company or underwriter approved by the Board, providing for

(14) Since this manuscript went to press the Acts passed in Alberta and New Brunswick during the winter of 1918 have become available. They follow, in essential principles, the Ontario type of legislation.

(15) Copies of the Act are sold by the King's Printer, Winnipeg, Man. at 25 cents each.

payment to the Board of the compensation which may become payable by the employer during the period covered" by the statement of wages and the policy of insurance. An employer may, with the approval of the Governor-in-Council and the permission of the Board, carry his own insurance to pay liability and in this case he is not required to file the policy. The rates which are to be charged by such companies or underwriters are to be fixed by the Board, after proper hearings have been held, and can be changed from time to time. The Board also fixes the amount which can be charged by the insurer for procuring a policy or adjusting a claim or any other service in connection with the policy. The books, accounts and establishments of the employers are to be open at all times to the investigation of the Board or its officials.

An Administration Fund is provided for by compelling each company, underwriter or employer carrying his own insurance to pay to the Board seven and one-half per cent. of the premium as it is or as it would be had the employer insured himself in a company. This is payable when the Board demands it.

The payment of compensation is arranged for as follows:— Before an insurance company, underwriter or self-insured employer comes under the operation of the Act, it or he must pay to the Board a cash sum, whose amount is to be fixed by the Board, which shall be available immediately for the payment of compensation which may become due; when an actual case has been decided and compensation fixed by the Board, the company, underwriter or employer must pay the amount and if this is not done at once the Board may advance payment out of the deposit mentioned above; when those who made the deposit cease doing business or become no longer liable, the amount on deposit is returned.

In Schedule 1 of the Act are given the classes into which the industries governed by the above provisions are divided. These correspond, for the first forty-four classes, to the Ontario classification (16). To the Ontario lists are then added the groups of industries in which, in Part II. of that legislation, the employer is individually liable for the compensation (17). To these are added class 52, which includes vehicles propelled in any way otherwise than on tracks, streets, highways.

Part II. of the Act constitutes a strong employer's liability law in itself. It follows the exact wording of Part II. in the law of Ontario (18).

(16) See Ontario Act.
(17) See p. 310 ff.
(18) See p. 311 f.

CHAPTER III.

COMPENSATION LAWS IN OPERATION.

It has sometimes happened that a law has produced in actual life something the exact opposite of what one would expect from reading its provisions in the statute book. More often, the meaning of the enactment is modified by the Courts. In almost every case no careful thinker pretends to give an opinion as to what a law actually means until it has been interpreted in Court. It becomes necessary, therefore, for us to examine the operation of our compensation statutes in the actual world.

(1) The group of employers' liability laws considered first in the preceding chapter has produced, as might be expected, the largest amount of litigation. It will not be necessary to consider all the cases on record as some of them merely settle principles that are either self-evident or covered in other cases. The laws of the various provinces will come before us in the same order in which they have been analyzed.

(*a*) Quebec.

Section 1. The first sentence provides for compensation for accidents happening to workmen "by reason of or in the course of their work." The way in which this section has been interpreted by the Courts can be illustrated by reference to the following cases:

When a workman leaves his work against orders to attend to his own personal business and goes by a dangerous route in order to avoid being seen, no compensation can be given for the resultant accident (1).

A sailor killed by falling from his ship, when on board according to the terms of his hiring, is still the victim of an accident in the course of his employment (2). Temporary suspension of work deprives a workman of right to compensation only when he disobeys orders and goes into danger in his own interest (3). A train conductor, injured while ascertaining whether a particular train is the one for which he has been ordered to wait, has claim for compensation (4). A stone-cutter on piece-work was held to be an employee and entitled to compensation (5). A workman

(1) 26 Que. K.B. 281.
(2) 26 Que. K.B. 253.
(3) 26 Que. K.B. 281.
(4) 33 D.L.R. 27, 10 S. L.R. 8 (1917).
(5) 26 Que. K.B. 194.

compelled to work for ten hours in intense cold, with no rest or facilities for warming himself, and who in consequence freezes his feet, is entitled to compensation even though other men did not suffer any injury under the same circumstances (6). Payments by an employer to an injured workman operate as an acknowledgment of debt under the Act (7).

The remaining sentences of the section specify the kinds of employment to which the Act applies (8).

In this connection, the delivery of groceries was held not to be "transportation business" nor "loading or unloading," and so not to come under the Act (9). On the other hand an assistant on a bakery waggon was awarded compensation (10). Lumbering, when not for forest preservation, is an industry and so comes under the Act (11). An employee of the city of Montreal does not come under the Act (12). Well-digging is included (13), also bartending (14). The Act applies to municipal employees in the works of the municipality notwithstanding that the workman has not given notice within limit laid down by the city charter, as the provisions of the Act override other statutes (15). A man working at a fixed scale of prices, or furnishing materials and work at so much per foot under supervision, is not a builder, nor a subcontractor, but merely a workman, and is not responsible for any resultant damages (16).

If a man is employed in absolute independence of his employer he becomes a contractor or a sub-contractor (17).

Section 2. In cases of permanent and partial disablement, the law provides a rent equal to one-half the sum by which the workman's wages have been reduced through the accident.

A release signed by an employee thinking he was totally recovered was rendered void because of his ignorance as to his condition (18). If, after a first favorable judgment, an injury held to be temporary proves to be permanent, a second judgment can be sought and secured (19).

(6) 12 D.L.R. 303.
(7) 26 D.L.R. 34.
(8) See p. 294 above.
(9) 33 D.L.R. 470, 50 Que. S.C. 48.
(10) 35 D.L.R. 615, 52 Que. S.C. 62.
(11) 51 Que. S.C. 97 and 285.
(12) 49 Que. S.C. 62.
(13) 49 Que. S.C. 10.
(14) 50 Que. S.C. 285.
(15) 29 D.L.R. 240.
(16) 3 D.L.R. 369.
(17) 26 Que. K.B. 194.
(18) 49 Que. S.C. 319.
(19) "Labour Gazette," v. 16, p. 1798.

Connected with this sub-section the following interesting question arises:—What compensation shall be given in case the injured man returns to his former or to other work and earns as much as or more than he earned before the accident? The following cases bear on the point:—

A pension of $45.00 was granted for an injury to the spine which might later impair the earning power even though the workman had at the time returned to the same work and wages as before. (20) It was held in a later case that compensation could not be given unless the plaintiff shewed that there had been an actual decrease in wages (21). A workman injured to 80 per cent. of his physical working capacity is entitled to compensation even though able to earn, by tutoring, being an educated man, as good a livelihood as before (22). In deciding this, the latest case on the subject, the Judge pertinently remarked that to decide otherwise would be to declare, for instance, that if a man should lose both arms, there was no compensation due him in case he chanced to possess a good voice and was able to earn a good livelihood by going around singing in cafés and at concerts.

The loss of one leg secured for another plaintiff a pension of $247.50. The company appealed the last mentioned case on the ground that they could not be made to pay a rent greater than the interest on $2,000, but were overruled in the Appeal Court.

The defendants based their appeal on the paragraph of the section which says that the capital of the rents shall not, except in the case mentioned in article 7325, exceed two thousand dollars.

This case was then appealed to the Privy Council and the decision given by Lord Haldane, the latter part of the year 1915, fixed finally the interpretation of the statute. It will be noted that article 7322 of the Act specifies the rents to be paid in case of absolute and permanent, partial and permanent, and temporary incapacity, and then adds: "The capital of the rents shall not, however, in any case, except in the case mentioned in article 7325, exceed two thousand dollars." (Article 7325 gives the Court authority to increase or reduce the compensation if the accident was due to the inexcusable fault of the employer or employee respectively, but does not apply in this case.) The Court upheld the decisions of the lower Courts on the following grounds:—(a) Article 7329 provides that the employer shall, if the plaintiff so elects, pay the capital of the rent to an insurance company

(20) "Labour Gazette," 13: 1319.
(21) "Labour Gazette," 16: 752.
(22) "Labour Gazette," 17: 71.

which will provide an annuity in lieu thereof. This article was held to interpret the reference to capital in article 7322, and so this reference was not intended to limit the capital except in case of the transference of the capital to an insurance company. This would be reasonable on the ground that the plaintiff would be willing to accept a lower permanent annuity from an insurance company because it could not be revised and lowered in case his health should improve. (b) To construe the Act otherwise would produce extraordinary results: an old man would obtain a larger compensation than a young man whose expectation of life would be longer. (c) The Courts of Quebec seem to hold the same view and so it was held that the draftsman of the Act should have inserted article 7329 after 7322 as the explanation that was in the minds of those who framed the Act (23).

Section 3 deals with fatal accidents.

A widow can claim all the damages due only in case she can prove that no one else has any claim (24). A railway employee, killed in an accident, left as sole dependent a son under sixteen. The son claimed four times the annual salary and funeral expenses and the company claimed they were liable only for a sum to maintain and educate the boy until he became sixteen. Judgment was in favour of the boy (25).

Section 4 deals with foreign workmen.

A mother living in Sweden brought a successful claim against the C.P.R. for an accident happening to her son in Alberta because the railway has its head offices in Montreal (26).

Section 5 provides that the compensation can be reduced or increased because of the inexcusable fault of the workman or the employer respectively.

A workman in seeking an extra compensation for inexcusable fault can claim under the Act only a rent and not a lump sum as under the common law (27). An employer is liable for a larger sum than the maximum when the accident was due to inexcusable fault whether of the employer or of his foreman, or other representative; it is inexcusable fault for a foreman to order a workman to violate well-established rules (28).

To employ a minor, under 16 years, in violation of the law, and

(23) 23 D.L.R. 1, also 16 D.L.R. 830, and 49 Can. S.C.R. 163.
(24) 45 Que. S.C. 397.
(25) "Labour Gazette," v. 13, p. 582.
(26) 47 Que. S.C. 76.
(27) 27 D.L.R. 113.
(28) 3 D.L.R. 466.

to set him at work upon a dangerous automatic machine in poor repair is inexcusable fault on the part of the employer (29).

Section 6 provides that the Act does not apply to workmen earning more than one thousand dollars per year, and has been upheld by the Courts with the proviso in one case that the plaintiff's rights under common law still remain (30). In estimating a man's yearly wage, in order to determine whether or not the Act applies, it was held that the amounts he would have earned but for unexpected idleness should be added to his actual receipts (31).

Cases are still taken in Quebec under the common law. To allow an inexperienced employee to work stringing charged wires without furnishing rubber gloves makes the employer liable for damages (32). After the famous collapse of the Quebec Bridge in 1907, the Phœnix Bridge Co. was sued by an injured workman, who claimed $25,000. He was granted $20,000 on the ground that there were errors in the plans and defects in the chords of the bridge. As this accident happened prior to the date when the new law went into effect, the restrictions that might have been placed by it upon the amount of compensation did not apply (33).

(*b*) Saskatchewan.

Section 4 of the Act of this province provides for compensation for accidents arising "out of and in the course of the employment."

A $4,000 verdict is not excessive for injuries to a man, earning $1,200 to $1,500 per year, when he has suffered a weak back and neurasthenia (34). The employer is responsible even though the employee knew of, while not appreciating fully, a dangerous condition and did not report it (35). When a workman knows of the negligence of the employer, he is bound to use reasonable care to avoid consequences and to ascertain dangers incident to his work (36). In applying the Act, the words "out of" point to the origin or cause of the accident, and "in the course of" apply to the time, place and circumstances; a brakeman killed while switching cars by a certain process is entitled to compensation even though at the time of the accident he was on the ground instead of on the engine-tender step as he should have been (37).

(29) 51 Que. S.C. 137.
(30) "Labour Gazette," 14: 1234; 15: 866.
(31) "Labour Gazette," 16: 526.
(32) 26 D.L.R. 159.
(33) See "Labour Gazette," 11: 271.
(34) 4 D.L.R. 143.
(35) 4 D.L.R. 134.
(36) 11 D.L.R. 369.
(37) 15 D.L.R. 172.

An employer who does not provide against cave-ins when two others have occurred within 24 hours is negligent (38). For a workman, while riding in a work-train, to try to leave one car and alight on another while in motion does not constitute a risk for which claim can be made under the Act (39).

The following cases under common law are of interest:

It was held that when a conductor hired a man to help dig out a snow-bound train such an employee was in the employ of the railway company and that he was entitled to damages when injured by a collision when on his way home in the train from the work. The limit to the damages is that they must be "reasonable"; they were fixed at $10,000 for four months' confinement, much pain and a facial disfigurement (40). An award of $12,500 was given for injuries sustained through the negligence of a fellow-servant in carelessly pressing a lever because he did not carry a light about his duties when a light was necessary (41). No damages allowable if accident is joint fault of employee and employer (42).

(2) The group of compensation laws in which liability is shared mutually by associated groups of employers must now be considered. These laws have not been in force long enough to give us conclusions as to their value that can be regarded as in any sense final. The best that we can discover is a trend, and the confusing factor in the matter is that there are such conflicting opinions as to the direction that trend is taking; some persons who are supposed to know the facts intimately claim that the laws they favor are tending to a condition of superlative mutual benefit while the statutes which they oppose are certain to produce chaos and disaster.

Of these laws the Ontario Act was the first to come into force, January 1, 1915, being the date for its operation to begin. It has now had three full years in which to be tried out, and in the first annual reports many facts of interest claim our consideration. These may be summarized as follows:—

(*a*) *The Number of Employers.*

Under Schedule 1, in which the employers are liable for payments to the fund, but not for individual compensation, there was, in 1917, a total of about 14,000 employers; in 1915 there

(38) 15 D.L.R. 66.
(39) 26 D.L.R. 339.
(40) 2 D.L.R. 183.
(41) 2 D.L.R. 175.
(42) 11 D.L.R. 385.

were 1,252 employers listed in Schedule 2, comprising those who are liable for individual compensation fixed by the Board but not for payments to the fund; since that time, a large number of these employers have made application to be transferred to Schedule 1 of the Act.

(*b*) *Finances.*

For 1917 the total receipts for all the classes of Schedule 1 amounted to more than two and a half millions of dollars. The expenditures under Schedule 1 for the year can be seen in the following table:—

	1917
Compensation (other than Pensions)	$914,638
Set aside as Reserve for Pensions	614,711
Estimate for Medical Aid	83,514
Medical Aid	83,514
To Safety Associations	38,210
Administration	28,740
Deferred Compensation	33,515
Estimate for Continuing Disabilities	380,882
Estimate for Outstanding Accidents	490,462
Held as Disaster Reserve	23,926
Total	$2,692,115

There was a balance of nearly nine hundred thousand dollars with three of the thirty-four classes showing small deficits. These balances, it will be noted, are only provisional as there enters into the tables an element of estimated expenditures for each year.

The Pension Reserve is set aside to provide periodical payments in case of death or permanent disability. The lump sums are set aside from the general fund as awards for pensions are made and are at five per cent. having regard to the expectancy of life and the possibility of re-marriage on the part of the widow. By this system the Board aims to have the burden of cost for each year's accidents taken care of entirely by assessments made during that year. This plan was adopted by the Board after careful consideration of its alternative, namely, the "Current Cost" plan: by this method, enough money is assessed annually to satisfy the awards from the past falling due during the year and any lump awards and initial payments of pension awards made during the year (43).

(43) For a discussion of these plans, see Report of Ontario Board for 1916, p. 39 ff.

Under Schedule 2 are included the following: Municipal Corporations; Railways; Street Railways; Navigation Companies; Express Companies; Telegraph and Telephone Companies; certain accidents happening outside Ontario (per section 6 of the Act); cases referred to the Board by the Crown and "all other cases not included under Schedule 1," as munitions plants of Imperial Munitions Board, and the construction of the Parliament Buildings at Ottawa.

Under this Schedule, up to the end of 1917, there have been granted awards totalling $623,556. Towards these awards there have been deposited with the Board about $348,200, the bulk of which is now invested or on deposit for the payment of pensions as they come due.

Safety Associations were organized the first year in eighteen of the classes and have since been maintained according to practically the same system. With two exceptions these associations are provided with inspectors whose salaries and expenses are paid out of funds provided by the Board. The organization of these associations has been promoted by the Canadian Manufacturers' Association.

(c) *Accidents.*

During the year 1917, 28,702 accidents occurring during the year had been compensated, of which 256 were fatal cases, 1,418 were cases of permanent disability, and 12,896 involved but a temporary disability. Besides these there were 7,692 accidents reported which did not come under the Act because of the disability lasting less than seven days or for other reasons; there were also at the close of the year 1,430 cases in which the reports on file were not yet complete.

In addition to this first report the Board has also issued a series of circulars from which facts of a general nature are to be gleaned.

The rates to be levied upon the various classes are of great interest (44). They are higher than those previously charged by liability insurance companies in Ontario because the benefits are increased under the Act and there is no longer any need to prove the employer or his agent to be negligent. Statistics from American States having experience in such matters were used and adapted to local conditions and a list of rates arrived at which was put forth as merely tentative and subject to revision as experience might dictate. The lowest rate is 30 cents per $100 of the pay-

(44) Pamphlet of the Board. "Table of Rates."

roll, and prevails in the manufacture of boots, shoes and gloves and tobacco goods. Other low rates are 40 cents in leather goods and most clothing. The highest rate is $10.00 for nitro-glycerine; other high rates are $7.00 for erecting structures and bridges of steel, for wrecking or moving houses and work under water; $6.00 for sewers, etc., certain excavations and railway tunnelling or rock work, and $5.00 for track-laying and ballasting. The majority of the rates range from $1.00 to $2.00.

Up to the end of the year 1915 the Board had issued 86 regulations for carrying on its work. These regulations when approved by the Governor-in-Council became binding and a penalty is attached to their violation. With a few exceptions these deal with the classifications in Schedule 1. They provide for certain groupings of the classes, transfers of industries from one class or schedule to another, and rules for deciding as to collateral activities that may be carried on by the employer in connection with his main business or for his personal interests.

In their second annual report the Board, after a general review of the situation, said: "The two years' experience now had of the Act affords fair opportunities to judge of its merits. From the tenor of the communications from both employers and workmen few would care to revert to the old system. The furnishing of compensation without expense to the workman and at actual cost to the employer, the speedy disposition of cases, the removal of causes of friction between employer and workmen, immunity from litigation, and making compensation for injury the rule rather than the exception are the outstanding advantages of the present system. As under any law, there will be individual instances where the new condition may be less favorable to either party than the old, but the general advantage to both workmen and employers and to the community at large seems to be unquestioned."

With these statements, it may be said that the writer has not found anyone disposed to disagree. Workmen and their employers are one in declaring that the facts expressed in the above quotation are a correct statement of the case. That they are an adequate statement is strongly disputed by leading manufacturing interests of the province. Manufacturers willingly agree that the general principles of the Act are sound and that the above advantage of its operation are indisputable; as an additional benefit they are especially well disposed to the monthly pension plan, claiming, quite correctly, that it avoids the danger of lump sums being foolishly squandered by persons not used to handling large sums. On the other hand, they are disposed to object to the absolute

powers conferred upon the Board, and they feel that the present Board has been neither wise nor fair in some of their decisions. According to Section 60 of the Act the decisions of the Board are final and conclusive, and are not open to question or review by any Court, nor may proceedings by or before the Board be restrained by injunction or be removable into any court by *certiorari*. To this manufacturers strongly object.

They also criticize another weak feature of the Act, namely, the provision for a seven-day waiting period during which no compensation is to be given unless the disability extends for a longer time: if it does, then compensation becomes payable, not from the end of the waiting period, but from the date of the accident. The effect of this, according to the claim of the manufacturers, is to encourage malingering in the case of minor accidents which ordinarily should not disable the workman beyond three or four days: no workman, they say, who has been compelled to lay up for five days would think of going back to work on the seventh day when, by putting off his return to work one day longer, he could receive fifty-five per cent. of his lost wages for the entire period.

Regarding this quite reasonable claim on behalf of the employing interests, it may be said that the best modern thought in regard to the matter agrees with them that there should not be any compensation given for the waiting period. The standards adopted by the American Association for Labor Legislation provide for a waiting period of from three to seven days during which no compensation is payable. On the other hand, it may be pointed out that the annual report does not seem to bear out their fears in regard to cases of deception. Unfortunately, insofar as a clear understanding of the situation is concerned, the report does not tabulate the cases of temporary disability which terminated upon the expiration of a certain number of days after the accident: the figures give only the week of termination of such disabilities (45). During the year there were 10,750 cases of temporary disability, and of these 4,214, or slightly under 40 per cent. (46), terminated in one to two weeks after the acciednt, that is, at some time within the first week after the end of the waiting period. What proportion of these would suggest malingering because of terminating on the first day of that second week we are unable to say; nor do we know what proportion continued on well into the second week because the seriousness of the accident compelled it. But in any case the number does not seem to be relatively large;

(45) See Table 14, p. 31, Report for 1916.
(46) During 1915 this percentage was 35 per cent.

beside this should be placed the fact that during the year there were 7,672 accidents reported which, because the disability did not last for seven days or for some other reason which the report does not specify, did not come under the operation of the Act (47).

Whether cases of deception have thus far been relatively numerous or not, there remains under the present Act the possibility and the temptation; it is but reasonable to suppose that in time the Act will be modified in this respect so as to be in accord with the prevailing sentiment of the best science of labour legislation.

The laws of Nova Scotia, British Columbia and Manitoba have been in operation but one full year each, and the reports issued by their Boards, while interesting, do not as yet reveal the permanent possibilities of compensation legislation in these provinces. Those who are interested can secure these reports from the Boards in Halifax, Vancouver and Winnipeg respectively.

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(47) During 1915, while 8,544 cases of temporary disability were compensated for, there were 6,087 cases reported in which no award was made because the disability was less than seven days or for some other reason.

CHAPTER IV.

SOME CONSTRUCTIVE CONCLUSIONS.

In the preceding discussion we have traced, through their successive stages of development, the conditions under which injured workmen have been given, or denied, a financial compensation for their injury. We have seen that under the common law the injured man, or his dependents, was left, in many cases, without any redress; under the operation of employers' liability Acts, the securing of compensation was made difficult, costly and uncertain; the enactment of modern laws that are intended to provide definite, adequate and certain return for injury has also been set forth; we have seen the relation of these stages to the Canadian situation and the laws now in force, along with their practical results, have been explained as fully as space and available facts warrant.

To some readers, perhaps not closely in touch with the vast ramifications of a social problem such as this, it may seem that this subject has received more attention, in law and in practical life, than it deserves; there are some conscientious people to whom, no doubt, the problem of an injured workman is no more complex than the securing of another man to take his place so that the industrial machine may grind on. If there are any who feel that this movement has gone too far, that one group in society is receiving more than the share of attention that is its due, or that the employing interests of the nation are being exploited because of the popular agitation for social reform, there is one fact to be pointed out. When a workman takes his body and brain into a factory or to a process of work involving a certain amount of hazard, he is placing all that he has upon the altar of industry; the arm or eye or mental faculty or life that may unexpectedly be exacted as toll for industrial prosperity can never be replaced; the workman's total reserve is gone. On the contrary, when his employer puts his capital even to the last dollar into the business, his best reserve still remains out of danger; even though business reverses, beyond his control, should destroy his entire investment, he still keeps his best capital unimpaired for use again, his hands and brain, his business ability and sagacity. It is then reasonable as well as humane that the ma.. who is compelled to make the most unreserved sacrifice for industry should receive from industry as effective compensation as possible for an irreparable disaster. Industrial life has replaced many lost dollars and mortgaged

limousines, but the best that it can do for an amputated hand is a kid glove drawn over a lifeless and tragic bit of cork.

The reader will have noticed the extent to which the Canadian development has been part of a world movement. Our close connection with the life of Great Britain has been especially noticeable in all questions relating to law and procedure. When the doctrine of common employment became an accepted maxim in English courts it was given the same status in Canada. When dissatisfaction with the operation of this principle led to the adoption of liability Acts in England and later in the United States, Canadian study and legislation followed along the same lines. Within recent years, however, some Canadian provinces have begun looking to other countries for leadership, and the German system has been a determining factor in the forming of Canadian laws. The Ontario, Nova Scotia and British Columbia measures have in succession been founded upon an adoption of the German principle.

The results and probably outcome of our Canadian development may now be considered. The largest and most important province still clinging to the liability system is Quebec. A review of the cases mentioned in the preceding chapter (1) will reveal clearly all the evils and weaknesses of this method (2). (a) The uncertainty is shewn. There are many cases in which there is no possibility of deciding with any definiteness what chance the case would have in the Court. In many cases that are appealed the verdict of one judge is reversed by another, and then that latter Judge is in turn overruled by a third; in one case in which this alternation took place the case was settled finally only by the fourth Court confirming the opinion of the third; had the fourth Court, which was the Supreme Court of Canada, agreed with the second tribunal that tried the case and reversed, instead of confirming the third, the case would perhaps have been carried to England for a fifth and final adjudication (3). Another case has finally been settled, along with all others depending upon it as a precedent, only after much delay, by reaching the highest judicial authority in the Empire, the Judicial Committee of the Privy Council. Considerable extra uncertainty has been caused by section 5 of the Act which provides that the compensation can be reduced or increased because of the inexcusable fault of the workman or of the employer respectively. Sometimes this section

(1) See page 314 ff. above.
(2) These objections are enumerated on page 284.
(3) See page 316, above.

has been the cause of a denial of any relief whatever. Cases have been decided under this section in which the decisions do not seem to be compatible one with the other. For example, a blacksmith was denied any award for injuries incurred in touching a live wire because doing so was not in the course of his employment, although he had not been warned of the danger; in another case a plumber, sent to a house to do a job, helped a painter employed on the same house open a door into the cellar and was later injured by falling through it; he was given compensation (4). (b) The usual antagonism between employers and employees because of this constant and vexing litigation is, of course, readily inferrable after reading of the cases stated in the preceding chapter. (c) The need for high costs of litigation can be readily seen. In Quebec, as in other jurisdictions where this system prevails, a large percentage (5) of all awards is consumed in the costs of prosecuting the cases and in addition to the amount that he must finally pay to his workman each employer must pay handsomely for the defence of his case. And the amounts of the awards have been likewise disappointing; the compensation has in many cases been small and uncertain in all.

The operation of the Ontario system has been considered in the preceding chapter. From the facts now before us, it may not be too presumptuous to make some suggestions as to the course of probable and desirable development for the future.

It is certainly not too much to say that the Ontario Act has, barring some unpredictable development, made a permanent place for itself in Canadian legislation, and that it is almost certain to give increasing satisfaction as its administration is smoothened and standardized by experience. In adopting the principle of setting aside reserves for all pensions as they are awarded and in using the best actuarial tables in fixing the amount of such reserves (6), the Board has adopted a wise policy that will prevent any insolvency or suddenly increased assessments in the future. Amendments will, of course, change details in the Act, but its fundamental principles are sound and will remain as the guide in Canadian legislation so long as our industrial system remains upon its present foundation.

It is a natural development for other provinces to follow in her lead. The Nova Scotia and British Columbia laws are being put into effect in provinces that have a much smaller number of

(4) See page 314 ff., abcve.
(5) See page 284, above.
(6) Report of the Ontario Board for 1916, p. 39.

industries than Ontario. What effect this will have upon the system remains to be seen; it is admitted that insurance of every kind approaches the danger point as the number of risks carried is reduced. The Nova Scotia Act provided for but twenty classes instead of forty-three as in Ontario, and also that awards should be made out of the joint funds of all classes; the Board has since reduced these classes to ten. The British Columbia Act contains but twelve classes.

In New Brunswick a commission is now engaged in studying the question, and what sort of measure it will recommend for a province that is not largely industrial cannot now be foreseen. It would seem to be the logical development for the three Maritime Provinces to appoint in time a joint Maritime Board and merge all their establishments in united classes. These provinces constitute a geographical, business and social unit by themselves, and could readily pool their interests in this way without in any way providing an entering wedge for the much-dreaded suggestion of political "Maritime Union." The advantages of such a course would be many, chief among them being economy in management and stability for rates and funds because of a larger number of risks.

The Province of Quebec has a sufficiently large number of industries to warrant the adoption of the Ontario system. Suggestions for investigating the matter have been deferred until the present Act has had a longer period for a thorough testing, but a committee of inquiry will no doubt come before many years and following that an up-to-date law on the Ontario model.

Manitoba has embarked upon a course all her own, and experience alone will decide its value and permanence. It has been claimed that the Manitoba law gives greater compensation than that of Ontario and for rates that are practically the same. This is true in that Manitoba provides for nursing and medical expense not exceeding $100 and fixes the weekly payment for permanent total disability at not less than $6 per week unless the earnings were less than that sum. But it has been stated that these rates were accepted only because there was an agitation for state insurance in Manitoba, and the insurance companies, in order to prevent this coming into operation, agreed to give a little greater compensation than the Government scheme of Ontario gave and to maintain about the same rates as they had charged formerly. There will probably be added to the Ontario law soon an amendment providing for medical attention (7).

(7) The relative merits of the Manitoba and the Ontario systems are discussed more fully later in this chapter.

As to Saskatchewan and Alberta, seeing that neither has at present advanced legislation, the logical move would be to appoint a joint Commission of Inquiry with the possibility of a united Compensation Board and a merging of all industries in mutual Government insurance upon the Ontario plan.

Even though the principle of mutual insurance should prove to be not thoroughly satisfactory in any one province or group of provinces, there would be therein no reason why in the future there could not be a Canada-wide compensation law under the auspices of the Dominion Government. If, on the contrary, experience should develop, as most authorities believe it will, a quite general satisfaction with provincial laws after the Ontario model, there would be in that fact the strongest possible reason for believing that a nation-wide statute would be even more advantageous to all concerned. The variety and number of industries would then come far short of what Germany is coping with; the stability of rates and finances would be secured by the widest possible diffusion of the risks; the saving in management would be a large item; the existing funds could readily be consolidated and experience in the provinces would have provided a corps of well-trained experts competent to deal satisfactorily with the larger problem. Agitation, legislation, litigation and time will be required to bring this about, but none of them in greater measure than has preceded any great advance step in our national life.

Such a scheme would involve great problems; to secure efficiency and fairness, to keep the administration of the funds from becoming the politician's tool, to free the pay-roll of the Board from becoming the resting place of the political freebooter, to keep the system in touch with human needs on the one hand and economic demands on the other instead of becoming entangled in the meshes of the proverbially vacuous "red-tape"—all these questions will press for solution. But they would be no more acute than in any other great and necessary department of our Government. To solve them, we must look, not to the carping critic who drags forth unsatisfactory details to bolster up his special interest, but to the growing body of public opinion, and we must foster the growth of this enlightened conscience by cultivating a broader education, a more independent and truthful journalism, a more stable culture of Canadian youth and a recognition of the interest of each as being the concern of all.

All authorities agree that the old defences of negligence, common employment and assumption of risk should be done away with as being parts of "the law of the pack"; that a workman or

his surviving dependents should receive just compensation for an accident not caused by his own serious misconduct and lasting longer than a week, and that the best way to arrange for such compensation is by some system of insurance whereby the responsibility is distributed over a large number of employers.

The one feature upon which there is not an agreement of opinion is the devising of the best method for distributing this joint liability among the whole group of employers. After a law has been adopted doing away with all of the old defences and technicalities, removing the possibility of litigation, delay, indefiniteness, uncertainty and high costs of settlement, the question still remains for an answer: Shall the employers be merged in compulsory mutual insurance societies under Government control or shall they be compelled to take out policies in private casualty companies under Government regulations? These two systems have each certain variations. For example, in regard to mutual insurance, in some cases, such associations are self-governing; in others, state regulated; in some, each class of allied employers contributes to a class fund from which awards are made for accidents happening within the class; in others, the industries are classified only for the fixing of rates while compensation is paid from the common fund into which the payments from all classes go. In regard to casualty company insurance, in some cases the Government allows the rates fixed by the companies; in others the rates are finally determined by a Government Board; in some cases the companies deal directly with the employers and pay any awards directly to the persons who are to receive them; in other cases, the insurance policies are deposited with a Government Commission by whom all awards are made and to whom they are paid for transmission to the proper persons. But regardless of these individual variations the two methods stand opposed to each other as fundamentally different in principle and in operation. Because both systems are now in active operation in Canada, each with its advocates and opponents, and because future development in other provinces will be compelled to follow the one course or the other, it seems necessary to discuss here the relative merits and defects of the two. Ontario, Nova Scotia and British Columbia, as the reader will recall, have mutual insurance, while Manitoba has placed hers in the hands of private companies under strict Governmental control.

Dealing first with casualty company insurance, we find certain arguments advanced in its favour.

(1) It leaves the employer free to choose his own method of providing adequate compensation for his employees; the law can

only require that the compensation be just and adequate, but has no right to interfere with the methods for carrying on private business. This argument raises such a fundamental distinction between two diametrically opposed ideals of life, of business and of government, that it cannot be discussed fully here. It may be remarked merely that the consciousness of the modern world has laid down the principle once and for all that because all members of society are so closely dependent upon one another, no man's conduct or business can ever again be regarded as an exclusively individual matter.

(2) Company insurance is the most convenient and the safest for the employers. That it is convenient and safe is beyond all dispute, but that it is the most so remains unproven; experience on this continent is as yet so inconclusive that from the same mass of facts, advocates of opposing systems secure ingenious arguments for their claims.

(3) "It furnishes complete indemnity at fairly differentiated level rates, may readily be combined with insurance of other liabilities and carries with it expert inspection of boilers, elevators, machinery, etc." With the exception of the combined insurance, these are all to be reasonably expected as the outcome of such mutual associations as have so far gone into operation and the possibility of combining insurance is not in itself of weight.

(4) A favorite line of argument is made up of prophecies as to the disaster and uncertainty that are almost certain to be the outcome of mutual or state insurance. Experience has proven prophecy to be oftentimes a dangerous argument; it becomes most effective when translated into history.

We must turn now to mutual insurance, particularly when under state control as in Germany, Ontario and United States. This is the form which seems to be in the ascendant and consequently has received the most serious consideration from its opponents. Some strong arguments have been urged against it.

The German system for compensation has been longest in operation and has received the strongest laudation from its friends and the most severe condemnation from others.

Two pamphlets have been circulated widely in this country, both of which are written by German authorities and criticized quite severely the German system. The first appeared in 1911 from the pen of Dr. Ferdinand Friedensburg, a retired member of the governing body of Germany's Imperial Insurance Department. The author was originally appointed on the board to represent the ultra-conservative element who opposed the whole insurance scheme. The criticisms concern various details of administration,

but may be said in general to concern the spirit in which the system is carried out, there being too much solicitude for the working men. This encourages fraud and an over anxiety to get on the funds as pensioners. The pamphlet has been said to carry less weight in Germany than with foreign reviewers. The present director of the German Imperial Statistical Department has warned us not to take the pamphlet too seriously, as the author has always been regarded in his own country as an extremist. One who has analyzed carefully all his contentions summarizes them as sarcastic, biassed and often inconsistent and self-contradictory. Their chief virtue lies in the fact that they give a needed warning against the danger of allowing the administration of a system to be guided by a short-sighted humanitarianism, which of course is readily possible (8).

In 1914 there was issued in this country a translation of a large pamphlet by Professor Ludwig Bernhard, of the University of Berlin, entitled "Undesirable Results of German Social Legislation." This booklet deals, as does the one just referred to, with the whole scheme of social insurance, but includes pertinent references to compensation for injuries. The important counts in the author's indictment which concern us are: the granting of pensions leads to feigned incapacity and unexpected slowness of recovery even to the extent of actual attempts at retarding recovery from wounds, etc.; the fact of being insured produces, even in the case of slightly injured men, a nervous condition under which work becomes impossible; conversation on the part of friends and relatives suggests illness and weakness, and there has arisen what has been called an "accident-law neurosis" as distinguished from an "accident neurosis"; any reforms to the law to prevent impositions and injustices have become very difficult because no legislators want to risk the opposition of the labour vote; the fact that appeals can be taken by workmen without cost means that a great many cases have to be considered needlessly and this social legislation becomes administered for the promotion of party politics (9).

In regard to these claims we may say for one thing that the claims are too vague to be admitted as a wholesale indictment of a vast system that is too complicated to be condemned or approved

(8) "The Practical Results of Workmen's Insurance in Germany," published by The Workmen's Compensation Service and Information Bureau, 1 Liberty St., New York. See also Interim Report of the Ontario Commission, p. 128.

(9) Issued by Workmen's Compensation Publicity Bureau, 80 Maiden Lane, New York.

upon isolated cases; Professor Bernhard has not given us statistics by which we can compare the number of instances of fraud, malingering and neurosis with the total number of accidents for which compensation is made yearly. Again, the real indictment of the book is drawn against human nature and does not stand against a system devised to give as just awards as possible to injured men: the fact that men often deceitfully loaf at their daily work is no reason why men should not be engaged in large numbers to work at a daily wage. Further, the fact that the system often becomes a political instrument is an argument not against the essentials of the system, but against the political ideals of the public; because Government bridges are sought by constituents and given by legislators as political gifts in return for popular support is no reason why rivers should be left without bridges.

The book is singularly lacking in constructive suggestions and does not attempt to deal with the whole insurance system from a broad outlook. It is being circulated in this country by an organization whose head office is the office of a casualty company and whose officers are presidents of casualty companies; it should be pointed out that what these casualty companies want is not the refusal to adopt the German standards of compensation or methods of awarding what the compensation shall be; they seek, quite legitimately of course, the right to sell casualty insurance in States where compensation is provided for by law; they do not want the Government to create a monopoly either for itself or for mutual associations authorized by it; it must be remembered that should their demands be granted, as in Manitoba, where all the business is turned over to them, the evils mentioned in Professor Bernhard's book would be just as liable to appear as if the casualty companies were ruled out, as in Ontario.

The real issue between the casualty companies and mutual associations is a question of relative cost and service rendered. Before the British Columbia Act was drawn up, the committee of investigation visited the United States and paid special attention to the much discussed question of insurance carriers. In its report we read:—

"From a careful consideration of evidence, it is apparent that the casualty insurance companies, from the standpoint of economy, have utterly failed to show as good results as either the mutual companies or the state-administered funds, and this both as to rates of premiums and costs of administration. The economic waste of allowing casualty insurance companies to carry on this class of insurance unquestionably amounts to many millions of dollars each year, and when we consider that this money is

either secured from increased premiums from employers or retained from moneys which otherwise might be paid to injured workmen, the advantage in eliminating the waste is apparent. The evidence also discloses that the cost of administration through a State Fund is less than through a mutual insurance company and that such cost in case of an exclusive State Fund is less than where the State Fund is operated along with competing insurance companies." The average expense of casualty companies is given as about 40 per cent. of earned premiums; for State Funds it ranges from 7 to 17 per cent. and for Mutual Funds around 18 per cent. The claim that State Funds are insolvent has been true in some cases where the commission was not given authority to fix adequate rates, but where such authority is given solvency can readily be assured (10).

Finally then, it seems evident that in taking the course she has Ontario has chosen the wisest path; she has initiated the system that, modified and improved as it will be with the passing of time, is destined to be an inspiration and a model to Canadian legislation for a long future.

"New times demand new measures and new men.
The world advances and in time outgrows
The laws that in our fathers' days were best;
And doubtless after us some finer scheme
Will be shaped out by wiser men than we,
Made wiser by the steady growth of truth."

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(10) For comparison of leading methods, see "American Labour Legislation Review," v. 3, No. 2, p. 245. Vol. 5, No. 1, gives the results of three years' experience under the New Jersey law.

APPENDIX.

Literature Dealing with Workmen's Compensation in Canada.

1. Reports and Government Publications.

Journals and Proceedings of the various Provincial Legislatures; these contain isolated references to the history and development of the compensation movement from the legislative standpoint.

"The Labour Gazette," published monthly by the Department of Labour of the Dominion Government, Ottawa; contains periodical surveys of compensation legislation and a monthly digest of all accident cases dealt with in the Courts; issues of November and December, 1910, contain a general survey of the situation up to that date.

Compensation Acts, published by the various Provincial Governments.

Reports of the Ontario Commission appointed to investigate laws in other countries and to make recommendations: Preliminary, Interim and Final Reports; contain elaborate analyses of Acts in other countries and detailed reports of arguments presented by various interests before the Commission.

Annual Reports of the Workmen's Compensation Board of Ontario for 1915 covering also Report for 1914 and Organization; for 1916, for 1917; distributed by the Board, Normal School Buildings, Toronto.

Circulars issued by the Ontario Board dealing with table of rates, medical attention and reporting accidents, synopsis of the Act. Who are under Part I. and Synopsis of Regulations.

Table of Rates, etc., issued by the Boards of Nova Scotia, British Columbia and Manitoba.

2. General.

"A Criticism of the Insurance Features of the Workmen's Compensation Act of Nova Scotia," by P. T. Sherman, New York; 1915: 30 pp.

"Workmen's Compensation," by Miles M. Dawson: Canadian Manufacturers' Association; Toronto; 1914: 16 pp.

"Workmen's Compensation," by F. W. Wegenast; Ontario Bar Association; Toronto; 1912: 14 pp.