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**THE INDIAN
WORKMEN'S COMPENSATION ACT
(VIII OF 1923)**

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PREFACE

In introducing what is now the ~~Workmen's Com-~~
pensation Act, 1922, in the Legislative Assembly,
the Hon. Mr. Innes said, "What we have tried to do
is to frame a Bill under which men without any
expert legal knowledge, the employer and his work-
man, will be able to see for themselves whether in
any particular case compensation is due, and, if so,
what the compensation amounts to." This book has
been written in the hope that it will assist in
furthering that object. The Act is not a simple one
to master. The very endeavour to leave as few
opportunities for litigation as possible has resulted
in a large amount of detail requiring close reading of
every provision and constant reference to other pro-
visions. And although the Act has been so con-
structed that the layman should be able to under-
stand it and to use it, he cannot except to do either
unless he is willing to devote patient study to it.

The object of this book, then, is to present a fairly
complete view of the scope and intention of the Act.
It is rather an introduction to the Act than a com-
mentary upon it. While it is hoped that the book
will present no difficulty to those who have no pre-
vious knowledge of the law, every endeavour has

been made to secure legal accuracy. In this connection the author desires to acknowledge the great assistance he has received from Mr. W. T. M. Wright, I.C.S., who was largely responsible for the drafting of the Act. Legal niceties have been avoided as far as possible, and the examples chosen are, for the most part, of a fairly obvious type. But the views expressed have been checked by reference to numerous authorities and decisions.

As far as possible, the quotation of decisions has been avoided, both because the Act should be expounded and applied on its own merits, and because isolated quotations from judgments are too often misleading. But no one who wishes to make a particular study of the law can afford to ignore the English decisions, and reference has been made to a few of those which may prove of special assistance in connection with this Act.

In view of the author's official connection with the subject of this book, it should be clearly understood that the statements made in it represent his personal views, and have no official authority of any kind.

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INDIAN WORKMEN'S COMPENSATION.

CHAPTER I. EMPLOYERS.

1. THE Act is described in the preamble as designed "to provide for the payment by certain classes of employers to their workmen of compensation." Workmen are defined in the Act, and those who employ workmen falling under the definition are normally liable for the payment of compensation to them. In this chapter the main question examined will be—Who is liable to pay compensation?

2. SECTION 3 (1) states that the "employer shall be liable to pay compensation" when compensation is due. "Employer," in the words of Mr. Beven, "means a person who proposes a contract of service, and whose offer is accepted".* The contract of employment is referred to section 2 (1) (n), where it is stated that the Act applies "whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in

* Thomas Beven: The Law of Employers' Liability and Workmen's Compensation.

writing". Speaking of the Workmen's Compensation Act, 1906 (which will be referred to hereafter as the British Act), Mr. Beven says, "An employer is one with whom a 'workman' within the definition in the Act, has entered into or works under a contract of service or apprenticeship". These words also apply to this Act. Note that the very words "contract of service or apprenticeship" appear in clause 2(1) (e).

3. It will be noticed that the definition of "employer" suggested in the preceding paragraph does not coincide with the words used in section 2(1) (e), which contains a definition of "employer". But the latter definition must not be regarded as comprehensive. It does not profess to mention every class of employer. It begins with the words "'employer' includes" and then specifies three classes to be included in the meaning of the word, in addition to those covered by the ordinary meaning of the term. It then goes on to explain who is the employer in a special case that might otherwise be the subject of doubt. The three classes are:—

- (i) anybody, of persons whether incorporated or not, *e.g.*, incorporated companies or groups of men who have servants jointly.

(ii) the managing agent of any employer. (See paragraph 4.)

(iii) the legal representatives of a deceased employer.

4. "MANAGING AGENT" is defined in section 2(1) (f). Note that the term "person," in accordance with section 2(39) of the General Clauses Act, 1897, must be read as including "any company or association or body of individuals, whether incorporated or not". An individual manager subordinate to an employer is not a managing agent.

5. THE definition of "employer" also contains provision for one special case. "When the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship," the employer "means such other person while the workman is working for him". The wording of this is adapted from section 13 of the British Act, but this provision is the exact reverse of the British provision. In the British Act the original employer remains the employer in such a case. The Indian Act is more in accordance with the ordinary law of employment. It makes that employer liable who controlled the labour of the workman when the accident occurred. This case should not be confused with that of labour working under contractors, which

is discussed in the paragraphs that follow. In the case now being considered, the workman makes a contract with one employer, and then serves another.

6. SPECIAL provision is made for the case of workmen employed under contractors. Section 12, which deals with this case, follows the wording and arrangement of the British section 4, with one important variation and a few minor alterations. To retain a clear grasp of the scope and purpose of the section, it is essential to remember what the effect would be if the section did not exist. "Employer" means a person who has a contract of service with the workman. Consequently, when contractors engage labour, they are the employers of that labour, and the person from whom they have taken their contract is not the employer of any of the contractors' labourers. What this section does is to make the principal employer (i.e., the man who offered the contract to the contractor) liable to pay compensation to the contractor's workmen in certain cases. The object of the section, in the words of Mr. Willis,* "is to prevent an employer from escaping liability by contracting with some one else to provide labour or to execute work, and to give a workman, employed by a contractor, a double security for his compensation, which, but for this provision, he might lose through the poverty of his direct employer".

* W. Addington Willis—*The Workmen's Compensation Act.*

7. THERE are four conditions, all of which must be satisfied before the principal employer (referred to in this section as the principal) can be held liable. One preliminary condition, of course, is that the case must be one in which the principal would have had to pay if he had employed the workman directly. The section, in other words, does not enlarge the workman's claim; it merely enlarges his methods of making good that claim. If the workman has a valid claim for compensation, and is employed under a contractor, then this section will only apply if three further conditions have been satisfied.

8. (i) THE first condition is that the contract must be made "in the course of or for the purposes of" the employer's trade or business. The same words appear in the British Act, but this condition is not of such great importance in India because it will always (or nearly always) be satisfied automatically if the next condition is satisfied.

9. (ii) THE next condition, which is of prime importance, is that the work must ordinarily be "part of the trade or business of the principal". This is a notable variation from the British Act, which here has the words "undertaken by the principal". As much of the case-law which has grown up round the British section centres on this latter phrase, great caution should be exercised

in applying any conclusions that can be deduced from English decisions. The Indian phrase is clearer in its meaning, and should not give so much trouble. To take a few obvious examples, the extraction of coal is part of the business of a mine owner, and if he employs his labour through contractors, the condition is satisfied in this case. On the other hand the building of premises is not part of the business of a textile manufacturer, and if a cotton mill employs an engineering firm or a private contractor to put up an extension, the millowners have no liability towards the men employed by the contractor. Similarly, if a lawyer employs a contractor to repair his house or his office, the repair of houses is not part of the lawyer's business, and he escapes liability.

10. IN this connection section 2 (2) is important for it provides that "the exercise and performance of the powers and duties of a local authority or of any department of the Government," shall normally be regarded as "the trade or business of such authority or department". (cf. s. 13 of the British Act). Thus the building of a Government Office by the Public Works Department would be part of the business of that department, and they would be liable to workmen working under their contractors on such work. Similarly, a municipality erecting water-works would be included.

11. (iii) THE last condition is that the accident must occur "on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management". (Sub-section (4) .) If the contractor does his part of the work on entirely separate premises, over which the principal has no control, the principal has no liability. But "in, on or about the premises" must be given a fairly wide meaning, *e.g.*, it would cover the whole area marked out for the laying down of a railway line, and would probably cover the area adjacent to the actual premises of the principal. If, to take an example where the condition is not satisfied, a shipping firm employs a scaling contractor who has the ship taken to his own dock, the firm is free from liability for anything that happens to the contractor's men there. Similarly, where any work is given out on contract to be done away from the premises altogether, the principal is not liable.

12. SECTION 12(3) provides that nothing in section 12 is to prevent the workman from recovering from the contractor. The contractor is his employer, and the workman can proceed against him if he wishes. Claims cannot be made against both nor against the contractor and the principal jointly.

The workman must choose one or the other. He should make this choice promptly, and serve notice on the party whom he selects. (He might be able to use the provisions of the latter half of sub-section 12(1) read with section 10(2) to claim against the contractor as a "person directly responsible to" the principal, after he had served notice on the contractor but if he has served notice on the principal, he will find it difficult to establish a claim against the contractor. In either case, the safe course is to serve on the party against whom the claim is to be made as suggested above.)

13. THE ultimate liability rests in every case with the real employer of the workman, *i.e.*, with the contractor, for the principal, when he has been held liable to pay compensation, has a right of indemnity against the contractor. Subject to any rules that may be made, employers who are confronted with a claim before the Commissioner, and who intend to recover from their contractors, would be well advised to apply for indemnity before the claim has been decided. A principal who intends to recover should be very careful, before paying any money by agreement, to satisfy himself that the money is really due under the Act, as the contractor may afterwards plead that the principal was not really liable, and thus defeat the claim for indemnity.

14. UNDER SECTION 12(1), compensation has to be calculated on the wages the workman was getting from the contractor. This is only just, but it demands caution on the part of the principal to prevent the contractor and the workman colluding to claim on a higher wage than is actually paid. The principal will not, as a rule, be able to say what the wages actually are. He is protected from this danger by the provision throwing the ultimate liability on the contractor, but many employers will not want to recover from small contractors. Where an employer is dealing with small men who might collude with workmen he could guard himself fully by stipulating that when compensation is on a wage above a certain figure, the contractor shall pay the excess.

15. THERE is another method by which persons held liable to pay compensation can, in certain cases, pass on the cost; this is under section 13 which treats of the remedies of an employer against a stranger. This section follows in some respects the British section 6, but it differs in two important particulars, *viz.*—

(i) it says nothing about the rights of the workman against a third party.

(ii) recovery is by procedure in the ordinary Civil Courts, and not in compensation proceedings.

The section enables an employer from whom a workman has recovered compensation to recoup himself at the expense of any third party to whom he can bring home responsibility for the accident or its results.

16. "RECOVERED" in this section is not restricted to recovery by claims before the Commissioner: a workman recovers compensation if he gets it by agreement. But here again, the employer who wishes to prefer a claim for damages must be careful not to pay money that is not strictly due. All that the section does is to add to any damages the employer may be able to obtain from the third party, the amount of any compensation he has been compelled to pay. Thus if, owing to gross negligence on the part of a bus driver, a bus crashes into a tramcar and kills the conductor, the tramway company can sue the bus company for the compensation paid to the conductor's dependants, as well as for any damage to the tram. The workman has also a right to sue third parties (but see paragraph 25).

17. It is important to notice that, although an employer may be able, in some cases, to recover from other persons what he has given in compensation, he cannot evade the liability by any arrangement with the workman. Section 17 prevents, in the clearest possible terms, any "contracting out,"

i.e., if the employer gets the workman to agree that in the event of an accident, he is not to claim full compensation or is not to claim any compensation, or is to get some different kind of compensation from that specified in the Act, such an agreement will be of no avail to the employer when the accident occurs. The workman will be able to assert his full rights under the Act in spite of it, although he may have obtained some advantage, *e.g.*, higher wages, under the agreement. This section applies only to contracts made with workmen. It does not prevent the employer from contracting with some third party so as to help him to recover his loss, *e.g.*, he can contract with an insurance company, and he can contract with other employers to share mutually the cost of any accidents. So also a contractor can have a clause entered in his contract that the principal employer from whom he has taken the contract shall refund all compensation charges.

18. THIS provision differs from the elaborate provisions in section 3 of the British Act. That Act allows an employer who proves that he has a private scheme of compensation which is at least as generous as the provisions of the Act to contract out of the Act. What is the Indian employer to do when he has such a system? Provision is made for this in the proviso to sub-section (1) of section

4 (at the end of part D of that sub-section). Among other things, this proviso enables an employer paying money under such a scheme to set off the sums paid against any amount that may be claimed from him under the Act. It must be clear, however, that the money is paid by way of compensation. Employers who wish to continue with schemes more generous than that contained in the Act will find it safest to separate the sums due under the Act and see that these are paid in the manner prescribed. The value of this precaution will be obvious in view of what follows in paragraphs 21 and 22.

19. THE money due is to be paid to the workman in the ordinary case. But the employer can deposit any compensation with the Commissioner, and get his acquittance from the Commissioner. He will find it convenient to adopt this procedure when the workman contests the correctness of the amount he offers, or when there is likely to be any difficulty in getting a receipt from a workman. There is one case in which the employer must deposit the money with the Commissioner; that is the case of a fatal accident. The money must not be paid to the dependants direct: if the employer pays the money direct, he may find himself liable to pay it over again, as the duty of deciding who are dependants and which dependants ought to get the money rests solely with the Commissioner.

Further, in the case of persons under 18, lunatics, etc., the Commissioner may issue instructions to the employer to pay compensation for temporary disablement to any dependant or other person fitted to provide for the welfare of the workman to whom the money is due. (Section 8 (5) .)

20. SUB-SECTIONS (4) and (5) of section 15 contain provisions designed to prevent shipowners from incurring double payments on account of the same charges. Analogous provisions will be found in Section 7 of the British Act. These provisions have reference especially to section 34 of the British Merchant Shipping Act, 1906, which already imposes certain charges in respect of injured seamen on the owners of all British ships, except when they are actually within Indian or Dominion territorial waters. Thus, if masters or seamen receive any injury in the service of the ship, the owner must provide maintenance and medical attention, etc., for them so long as they are unfit, and if such masters or seamen die, the owner must provide for the burial expenses.

21. So far, the only liability of employers which has been discussed is the liability to pay compensation. But they have other liabilities. One such liability is stated in section 28 which deals with the registration of agreements. This is considered in further detail in paragraphs 147 to

150. The point to observe is that in two cases the employer is compelled to register agreements. One is the case of the payment of lump sums (as opposed to recurring payments). The other is the case of the payment of any sum (whether a lump sum or a recurring payment) to a person under a legal disability, *e.g.*, to a person under 18, or a person of unsound mind.

22. If the employer fails to register an agreement that is required to be registered, he may incur a heavy penalty under section 29. For he can then claim to set off only half the sum he has already paid to the workman, *e.g.*, if he pays by agreement to the workman a lump sum of Rs. 800 which he finds to be due, and does not register an agreement, the workman may later claim Rs. 800 through the Commissioner, and the employer can only claim as a right a set off of Rs. 400. The Commissioner can, it is true, remit any part of this penalty, or even the whole of it, but it is clear that he is not intended to do so unless good cause is shown for so doing. The law contemplates the exaction of the penalty in the ordinary case, and its remission only in special cases.

23. WHERE money is deposited with the Commissioner, registration will be superfluous, even if the employer has come to an agreement with

the dependants of a deceased workman as to the amount he has to pay. The object of registration is to ensure that proper amounts are paid, and where all the money passes through the Commissioner, the adequacy of the sums comes automatically under his scrutiny. Further, the penalty imposed by section 29 refers only to sums paid to the workman. This would include sums paid to dependants (see section 2 (1) (u), last words of the sub-section), but it could not include sums paid to the Commissioner.

24. A FURTHER liability may be imposed under section 16, by which the Government of India can require returns regarding compensation to be furnished by employers, or any class of employers. Thus the liabilities of the employer under the Act consist of—

- (a) the liability to pay compensation to the workman or to the Commissioner as the case may be,
- (b) the liability to register agreements, and
- (c) the liability to furnish returns when so required.

25. THE liability of employers to pay their workmen for injuries sustained, so far as this Act is concerned, is enforceable only by the Commissioner appointed by the Local Government under section

20 (1). Section 19 (1) gives him jurisdiction to settle all disputes relating to compensation, and section 19 (2) prevents these questions from being brought before the Civil Courts. But an employer may also be liable to a suit for damages under the common law, as enlarged for fatal cases by the Fatal Accidents Act (XIII of 1855), and such a claim would be brought in the Civil Court. What is done to meet the danger of the double claim? The provisions will be found in section 3 (5). The effect of this sub-section is:—

(1) If a workman institutes a suit in the Civil Courts, he forfeits all his claims to compensation under this Act, whether the suit succeeds or not, and whether the suit is against the employer or against a third party.

(2) If a workman institutes a claim before the Commissioner for compensation, he cannot file a suit in the Civil Court, whether his compensation claim succeeds or not.

(3) If a workman comes to an agreement with his employer to get compensation, he cannot file a suit in the Civil Court.

26. THE general effect is that the workman must make his choice and cannot have it both ways. He would be well advised to prefer a claim for compensation rather than a suit for damages in

every case unless he is absolutely certain of heavy damages in the Civil Court. For if he goes to the Civil Court, the employer may have any of several defences open to him, whereas nearly all these defences are taken away for compensation claims by this Act. Further, the Act provides a cheap, rapid and safe way to get compensation in all valid cases, whereas procedure by suit in the Civil Court is usually expensive, frequently slow and always risky. It may seem that the worker who chooses a compensation claim runs big risks too, but as a matter of fact he is amply protected. The only important ground on which a claim for compensation can fail when a civil suit might succeed is that the applicant does not come within the definition of "workman". But in that case, this sub-section has no application, for it refers only to workmen. The applicant can then turn to the Civil Court.

27. SIMILARLY, the workman is protected against (a) the danger of being bound by an agreement which gives him inadequate compensation, and (b) the danger of being tied by an agreement which the employer does not fulfil. The first danger is prevented by the use of the word "compensation" in section 3 (5) (b). In section 2 (1) (c) compensation is defined as "compensation as provided for by this Act". It consequently means the full amount of

compensation, and an agreement to pay less will not secure the employer against a civil suit. It is very important, therefore, for employers to make sure that the full amount is paid. The second danger is prevented by section 31 which should be read with the last phrase of section 19 (2); this makes it clear that the workman can go to the Commissioner to have the agreement enforced.

28. THE freedom of employers to insure has already been mentioned, and it will be convenient to deal here with the liability which insurance companies or private insurers incur under the Act. So long as an employer is solvent, the insurance company has no direct liability to the workman. But if the employer becomes bankrupt, section 14 contains elaborate provisions designed to protect the the workman by throwing the liability on the insurers.

29. SUB-SECTIONS (1), (2), (4), (6) and (7) of section 14 have counterparts in sub-sections (1), (2), (3), (5) and (6) respectively of section 5 of the British Act; sub-sections (3) and (5) have no counterpart in that Act. The general effect is to give the workman all possible protection against losing compensation through his employer being unable to pay. Sub-section (1) states that if the employer is insured against compensation claims

and goes bankrupt, the insurers must step into the place of the employer, and accept his liabilities to the extent to which he has insured with them. If he was insured in full against claims, they will have to pay the full amount of the claim; if he was insured in part, they must pay that part. The workman, if he gets only part of his rights, can apply under sub-section (2) for the rest of the money in the bankruptcy proceedings. If the employer is not insured at all, the workman can apply for the whole of his claim in the bankruptcy proceedings; and his compensation claim gets priority under sub-section (4) to the full amount (and not, as in England, to a limited extent). But if the employer was insured in part, so that the workman can get some money from the insurance company and has merely to sue for the balance, then sub-section (6) applies, and the workman's claim does not get priority but must rank with ordinary debts.

SUB-SECTIONS (5) and (7) are straightforward.

30. The one provides for the calculation of the right to recurring payments as a lump sum, i.e., as a definite amount; the other excludes special cases of liquidation which have no connection with insolvency. Sub-section (3) is not quite so simple. It is a provision of some importance to workmen, for it gives them in some cases a greater right against

the insurers than the employer would have had, if he had remained solvent. It represents an increase over and above the liabilities imposed on insurers in England. What it means is that, when the workman claims compensation from the insurers, it will not be open to the insurers to plead that the employer had not fulfilled the terms of the contract (unless of course he had failed to pay his premia). Thus if the insurance policy contains a clause to the effect that the employer must provide certain safety devices, and if the employer has not fulfilled this requirement, that will not prevent the workman from recovering compensation from the insurance company. The workman must, however, give the insurers notice of the accident and the injury as soon as he can. If the workman does recover money under this sub-section, the insurers have a right to attempt to recover the sum in the bankruptcy proceedings, when the debt will be given priority. (Sub-sections (3) and (6) .)

CHAPTER II.

WORKMEN.

31. THE Act applies only to workmen, and the question discussed in this chapter is—What workmen come under the provisions of the Act? The definition will be found in section 2 (1) (n) read with Schedule II. The railway servants covered by the Act are specified in the sub-section; the other classes of workmen are detailed in the Schedule. It will be convenient to discuss these classes separately.

32. *A. Railway Servants.*—Subject to the exceptions noted in paragraph 33, all railway servants are workmen. The definition of “railway servants” is that contained in section 3 of the Indian Railways Act (IX of 1890), of which sub-section (7) reads as follows:—

“railway servants” means any person employed by a railway administration in connection with the services of a railway.

33. THERE are four classes excepted, viz.—

(i) persons “whose employment is of a casual nature and who” are “employed otherwise than fo

the purposes of the employer's trade or business". In view of the definition of "railway servant" given above, this definition has little practical importance when applied to railways. Its meaning is discussed in paragraphs 47 to 50.

(ii) persons who are "permanently employed in any administrative, district or sub-divisional office of a railway". For example, peons attached to the office of the Traffic Manager at Railway headquarters, and clerks working in an Assistant Engineer's office are excluded by this provision.

(iii) persons who are employed in any capacity specified in Schedule II. It should be noticed, however, that these persons, unlike persons mentioned above, are not excluded from the provisions of the Act. They are merely excluded from the category of railway servants, and may come in under Schedule II. The importance of this distinction is that the persons specified in Schedule II are subject to another exception, which does not apply to "railway servants"; unless they are employed on manual labour, their pay must not exceed Rs. 300 a month, if they are to be included as workmen. Thus, for example, a member of the supervising staff of a railway workshop who draws Rs. 350 a month is not a workman, because he comes under Schedule II as a person employed in a factory, and therefore the

monetary limit applies to him. But a station-master on the same pay is a workman, because he does not come under Schedule II, and the monetary limit does not therefore apply to him.

(iv) persons "working in the capacity of" members of "His Majesty's naval, military or air forces or of the Royal Indian Marine Service". See paragraph 58.

34. *B. Other workmen.*—Subject to the exceptions discussed in paragraphs 47, *et seq.*, all persons who are engaged in the occupations named in Schedule II are workmen. These fall under nine classes, discussed in paragraphs 35 to 45.

35. (i) *Tramway Employees.*—The definition includes all persons "employed in connection with the service of a tramway as defined in section 3 of the Indian Tramways Act, 1886". This section reads:—

"tramway" means a tramway, or any part of a tramway or any siding, turnout, connection, line or track belonging to a tramway.

36. (ii) *Factory Workers.*—The definition includes all persons employed within the meaning of section 2 (2) of the Factories Act (XII of 1911) in any factory as defined in section 3 (a) of that Act. References to Act XII of 1911 must be read here as

referring to that Act as it now stands, i.e., to the Act as amended by Act II of 1922 in this case. Section 3 (a) of the Act accordingly reads:—

“any premises wherein, or within the precincts of which, on any day in the year, not less than twenty persons are simultaneously employed, and steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article.”

37. It does not follow that because a factory is subject to the Factories Act, it is subject to the Workmen's Compensation Act. Local Governments have the power, under section 3 (b) of the Factories Act, to notify as factories premises on which as few as 10 persons are employed, whether they use mechanical power, etc., or not. But factories so notified do not come under this Act.

Section 2 (2) of the Factories Act reads as follows:—

“A person who works in a factory, whether for wages or not,*—

(a) in a manufacturing process or handicraft, or

* But this is qualified by the definition in section 2, 1 (a) see paragraph 57.

- (b) in cleaning any part of the factory used for any manufacturing process or handicraft, or
- (c) in cleaning or oiling any part of the machinery, or
- (d) in any other kind of work whatsoever, incidental to or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein."

38. THERE are no reported cases under this clause in India; the wording is taken from section 152 of the British Factory and Workshop Act, 1901. Clerks working in the factory might be regarded as performing a "kind of work.....connected with the article made," and will possibly come under the Act. But if the clerks for a factory are kept in entirely separate premises which do not form part of the factory, they will be excluded. Similarly, if departments carrying on processes which do not use mechanical power are relegated to separate premises distinct from the factory, persons employed in such departments will not come under this Act.

39. (iii) *Mine workers*.—The definition includes all persons employed within the meaning of section 3(u) of the Indian Mines Act 1923 (IV

of 1923) in any mine which is subject to the operation of that Act. Section 3(d) of the Mines Act reads:—

“A person is said to be ‘employed’ in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not,* in any mining operation, or in cleaning or oiling any part of the machinery used in or about the mine or in any other kind of work whatsoever incidental to, or connected with, mining operations.”

This is similar to the definition of employment in a factory, quoted in paragraph 37, except for the addition of the words “under appointment by or with the knowledge of the manager”. It is submitted that it is not necessary that the manager should have personal knowledge of every person, or should have appointed each person personally. Where men are engaged by contractors who are employed by the manager, he will be regarded as knowing that such persons are employed. The definition is designed to exclude unauthorised persons who may be brought or may trespass into a mine.

* See footnote to para. 37.

40. "MINE" is defined in section 3(f) of the Mines Act as follows:—

"Mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine:

Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke making or the dressing of minerals.

This is obviously an extremely wide definition, and covers everything in the way of excavating for minerals from a man digging for *kankar* upwards. But the Workmen's Compensation Act does not apply to every mine falling under the above definition, but only to those mines which are subject to the provisions of the Mines Act. And provision is made in section 46 of the Mines Act for exempting local areas or mines or groups or classes of mines from all or any of the provisions of that Act. If any mine or class of mines is exempted from all the provisions of the Mines Act under this section, the Workmen's Compensation Act will cease to apply to it.

41. (iv) *Seamen*.—"Seaman" is defined in section 2(1) (k) as meaning "any person forming part of the crew of any registered ship, but does not include the master of the ship". The master of a registered ship, however, is expressly mentioned, in section (iv) of the Schedule, along with "seamen," so that the general effect is to include the masters and crews of all registered ships. "Registered ship" is defined in section 2(1) (l). It includes:—

(a) sea-going ships, if registered under the Bombay Coasting Vessels Act (XIX of 1838), or the Indian Registration of Ships Act (X of 1841), or the Indian Registration of Ships Act (1841) Amendment Act (XI of 1850), whatever the tonnage of these ships;

(b) home-trade ships (i.e., ships plying between Indian ports only) registered under the above Acts, and of a registered tonnage of not less than 300 tons;

(c) inland steam vessels of a registered tonnage of not less than 100 tons.

42. "INLAND STEAM VESSEL" is defined as having the same meaning as in section 2 of the Inland Steam Vessels Act (I of 1917), which contains the following definitions:—

(1) "inland steam vessel" means a steam vessel which ordinarily plies on inland water;

(2) "inland water" means any canal, river, lake or other navigable water in British India ;

(5) "steam vessel" means every description of vessel propelled wholly or partly by the agency of steam.

It should also be noticed that, under section 70 of the Inland Steam Vessels Act, the Local Government can notify tidal waters as "inland waters". Ships registered under the British Merchant Shipping Act 1894, although registered in Indian port are not "registered ships," nor are ships registered under any foreign Act.

43. (v) *Dock labourers*.—See clause (v) of Schedule II for the definition. It is important to notice that the reference here is to "ship" and not to "registered ship". "Ship" must therefore be taken to have the meaning given in section 3 (51) of the General Clauses Act (X of 1897), which says, "ship shall include every description of vessel used in navigation not exclusively propelled by oars". Dock labourers employed in loading a ship at a mooring in a river are excluded from the operation of the Act. The staff employed to supervise are presumably employed "for the purpose of loading," etc., so that if the men they supervise are workmen, they are workmen too, unless of course they come under one of the exceptions

44. (vi) *Workers in the building trades.*—The definition is contained in clause (vi) of the Schedule, and is quite clear in its terms. The point to notice, as regards both buildings and bridges, is that the actual state reached does not matter ; the important question is the state when completed. Thus a building that is to comprise two storeys but of which the first storey is not completed is included. So is a one-storeyed commercial building of which all but the last 15 feet have been demolished. A building which has been used for a commercial or industrial purpose, and is afterwards converted to some other purpose remains one of the buildings to which the clause applies, so that workmen engaged on its repair or conversion or demolition are included. Heights and storeys count from ground level, so that a dwelling-house which consists of cellars and a round floor only is not included, while a warehouse 18 feet high built on a plinth 3 feet high is included. The supervising staff may presumably be regarded as “employed in the construction, etc.”

45. (vii) *Linesmen.*

(viii) *Sewage workers.*

(ix) *Members of fire brigades.*

The definitions of these classes are given in the last three clauses of the schedule. Both in the case of linesmen and in the case of sewage workers, those

whose share in the "setting up," "construction," etc., consists in direction and supervision may be regarded as "employed in setting up," "employed in the construction," etc. If this view is correct, the members of the supervising staff on such works are included.

46. HAVING ascertained that any man is included in one of the above categories, the next point to examine before deciding whether such a man is a workman or not is the applicability to him of the exceptions. The possible exceptions are three in number, and if a man can be brought under any one of these, he is not a workman for the purposes of the Act.

47. (i) Any "person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business" is excluded. Before a person can be excluded under this exception, both conditions must be satisfied, *i.e.*, he must—

(a) be employed on casual work, and

(b) be employed otherwise than for the purposes of his employer's trade or business.

The wording of this exception in the Act is taken from section 13 of the British Act.

48. IN spite of the numerous British decisions, no exact definition of the term "casual nature" can be given; the question has to be decided upon the facts in each case. But the employment, to be casual, must be either short or intermittent, and there must be something uncertain, almost accidental, about it. It is fairly safe to describe "casual" as the reverse of "regular," and continuous employment is not casual, provided that the words "regular" and "continuous" are examined from the point of view of the person offering the employment and not from the point of view of the person undertaking it. By way of illustration, consider the case of a man whose job is to repair tiled roofs. He might do this work regularly and continuously, but if he did it for a series of employers, each of whom called him in only when he required his services, and without any understanding that that man had a claim to the work, the employment under each employer would be of a casual nature. On the other hand, if any particular person who employed him had an arrangement that he should call and examine and repair the roof once every half year, that employment would not be casual, although it would not be continuous. Similarly, if the workman gave up working on his own account, and began to work under a master who gave him a regular wage and let out his services to those who required them, such

employment would not be casual, although the man might be doing exactly the same work as before.

49. BUT it is not sufficient to exclude a man to prove that his work is of a casual nature. He must be "employed otherwise than for the purposes of the employer's trade or business". This phrase again has been the subject of frequent decisions in England. It is obviously wider than the phrase "part of the trade or business" used in clause 12. Mr. Parsons, K.C., suggests that the "real test of whether the employment is for the purposes of the trade or business is whether the employer entered into the contract of service in his capacity of tradesman or man of business, or in his capacity of private individual".* This test is in consonance with the reported decisions in Britain, and is not difficult to apply.

50. IN the light of the two conditions discussed in the preceding paragraphs, it is probable that the only common cases that will come under this exception in the present Act are cases of men brought in to do building work. Dock labourers, though most of them are typically persons employed on work of a casual nature, are nearly always employed for the purposes of their employer's trade or business. If a schoolmaster brings in men to repair the roof of his private house, such men will normally

* Parsons—The Workmen's Compensation Act, 1906.

satisfy both the conditions given in paragraph 47 and will therefore be excluded. If a shopkeeper employs men on exactly similar work on his shop such men satisfy the first condition but not the second, and are therefore "workmen" if they come within the schedule. And if a schoolmaster engages men to work regularly on constructing a new house for himself, these men satisfy the second condition but not the first, and therefore come within the Act if the house is to consist of more than one storey.

51. (ii) The next exception relates to persons in receipt of more than Rs. 300 a month. Such persons are excluded, unless they are employed on "manual labour". Manual labour is not the same as manual work; nearly everyone works with his hands in some form or another. The question is whether the work is mainly of a physical type, or whether brain work or specialised skill enters into it *in any large degree*. The last words have to be added, as it is obvious that practically all work involves some skill, or the exercise of some brain work, and in England, where an analogous provision exists (section 13 of the British Act) regard is had to the predominant factor. Thus a tram-driver is not a manual labourer, nor is an engineer running a factory engine, though the man who stokes the engine fire is employed on manual labour. In view of this explanation it seems doubtful if there is any manual labourer in

India whose wages approach Rs. 300 a month, so that it is fairly safe to assume that if a person gets more than Rs. 300 a month, he is not a "workman" unless he is employed on the railways (see paragraph 33).

52. THE definition of "wages" is contained in section 2(1)(m). It is of great importance, not merely because of its application to the question of whether particular men are workmen or not, but because, as will be seen later, the scales of compensation are based directly upon the wages of workmen. The definition includes in the first place all money payments, i.e., the ordinary wage of a workman, and all allowances such as overtime payments, bonuses, payments for idle time such as the *khorki* given in some industries when short time is worked. These are included because they form part of the inducement offered to the workman to enter into a contract. Similarly the value of concessions given to a workman must be included, if that value is capable of being estimated in money. It is obviously possible to form an estimate of the money value of a free house, or of a cheap house, or of cheap grain, or of wages in grain, or of free clothing. The items excluded are, for the most part, those which are, as it were, merely the recoupment of expenses incurred. Thus travelling allowances and the value of travelling concessions are excluded, together with all sums paid to

cover special expenses which the workman has to incur on account of his employment, *e.g.*, allowances for the provision of tools, lamps, oil, etc. Payments made by an employer towards a pension scheme or a provident fund are also to be excluded, but if the workman contributes to such schemes, the deductions made from his pay must not be deducted when his wages are being reckoned.

53. It is, moreover, fairly clear from the references to "*the employer*" here and in section 2 (1) (n) that wages received from another employer on account of other work (*e.g.*, if the man is serving two employers on part-time jobs) cannot be counted. But, so far as this definition goes, payments received from third parties on account of the work done for the employer liable to pay compensation should, it seems, be included, *e.g.*, if a cabin steward on a ship gets tips from the passengers, this is a privilege on which he reckons in taking up employment and it can be estimated in money. If this is correct, such payments should be taken into account when deciding if a man's wages are over Rs. 300 or not; but, as will be seen later, they are not to be taken into account when reckoning wages for the purposes of compensation. The difference is due to the fact that section 5 applies to calculations for the purpose of wages, but not to calculations for the purpose of section 2 (1) (n).

54. THE only really difficult phrase in the definition is the phrase "capable of being estimated is money". Though this phrase does not appear in the British Act, it has formed a criterion in decisions in England*. The value of such concessions is obviously their value to the workman, so that concessions which take the form of luxuries which the workman would not provide, if left to himself, will not usually prove capable of a money estimate, *e.g.*, if the employer provides a modern hospital and a fully qualified doctor free to his employees, this can hardly be given a money value. Apart from the fact that the workman would not provide it for himself, the extent to which he may require it is a matter of uncertainty. Similarly, a free recreation ground is not a privilege which can be estimated in money.

55. It will not always be easy to estimate the money value of a privilege. The value, as already stated, is the value to the workman, but it does not necessarily mean the same thing as the cost to the workman of providing it for himself. A sailor at sea could not provide his own food, or preserve it, except at prohibitive rates, and when an industry is started away from a city, with houses built by an employer, the price of private houses

* See especially *Pomphrey v. Southwark Press*, W. C. C., Vol. III, pp. 194—201. This case is valuable as bearing on the difficult question of the wages of apprentices.

may be so exorbitant that no workman would come without the promise of a house. Obviously, in such a case, the exorbitant price demanded by the few house-owners is not the value of the house to the workman. It is not possible to give any infallible criterion: the English courts have on several occasions gone on the cost to the employer, but if this test is taken, care must be exercised to see that the employer is not providing a higher standard than the workman is accustomed to in his ordinary life. The amounts that a workman of the type being considered would spend on the commodity in question form a useful guide in difficult cases.

56. To return to the particular question at issue here—the limit of Rs. 300, two examples may be taken. A ship's officer drawing Rs. 250 a month and getting food valued at Rs. 2 a day is in receipt of more than Rs. 300 a month, and is not a "workman". An Assistant Manager of a mine getting Rs. 280 a month and a free house valued at Rs. 30 a month is also excluded. Difficulty must be anticipated, however, in ascertaining what the rate of money wages is in some cases, quite apart from the value of privileges that do not take the form of money. So far as compensation is concerned, elaborate rules will be found in section 5 to surmount the difficulties. But that section cannot be used here, and it will be necessary to form the fairest estimate that can be made. The

result of proceeding in the light of equity will not always be the same as the result given by section 5. For one thing certain items included here are excluded when section 5 applies; (see paragraph 123). Again, a man on an incremental scale of pay should, under the definition as it stands, get the rate he is drawing at the time of the accident, but under section 5 he will get the average of the preceding year, which will usually be less. Fortunately, the men in receipt of wages approximating to Rs. 300 a month are mostly on definite rates of pay, and their pay is usually disbursed monthly, so that the difficulties which section 5 is designed to surmount should not arise so frequently in their case as they would in the case of less highly paid men.

57. It should be noticed that a man, if he is to be deemed a workman, must be either a manual labourer or employed on wages. A person who is not a manual labourer and who does not draw wages is not a workman. This may operate to exclude some apprentices who are working in exchange for the training they get, without wages. The value of training can hardly be estimated in money; its value depends entirely on the use made of it by the individual. A University education has not a definite money value; it is usually of great value, but an estimate of the value is not possible. And every workman who is intelligent gains from his occupation

a benefit in the training he gets. One operative of three years' service may have made good use of his opportunities; another may not, but the value of the training is not capable of a money estimate. It would appear, therefore, that the wages of an apprentice, although they are usually low because he values the training and not the money wage, must not be made to include anything on account of this training, and, if he gets no benefit outside the training, he is not a workman at all. If he does draw a wage, he has a right to inclusion. It will be noticed that section 2 (1) (e) contains a clear reference to apprentices.

58. (iii) The third exception excludes "persons working in the capacity of" members of "His Majesty's naval, military or air forces or of the Royal Indian Marine Service". This exception should give no difficulty in interpretation. An Aircraftsman whose duty as such it is to attend to the repair of aeroplanes in an aeroplane factory, or an Army N.-C.O. sent to supervise in an Ordnance Factory would be excluded by this exception.

59. It is scarcely necessary to point out that the expression "workman" includes a woman. See section 13 (1) of the General Clauses Act and section 2 (1) (d) of this Act, which refers to the husband of a workman. Children are also included, and

the distinction between a minor or an adult is given in section 2 (1) (a), which fixes the dividing line at 15 years of age. Where any person injured has had his age certified for the purposes of the Factories Act, and the certificate was granted before the accident, that certificate is conclusive proof of his age, and cannot be rebutted by other evidence. (See section 18.) Thus if a workman has been working as an adult in a factory and a certificate is produced to show that he was certified as 13 years of age three years before the accident, the employer will not be allowed to prove that he is still under 15.

60. SECTION 2 (3) gives the Government of India power to include other persons engaged in hazardous occupations within the Act, *i.e.*, to add fresh occupations to Schedule II. This power can only be exercised after three months' notice, and exceptions (i) and (ii) discussed above will apply to any classes so included.

CHAPTER III.

THE CONDITIONS GOVERNING COMPENSATION.

61. HAVING considered who is liable to pay compensation, and who has the right to claim it, the next question concerns the circumstances which give rise to a valid claim. In what circumstances is compensation payable?

62. SECTION 3(1) contains the general principle. Compensation is payable when "personal injury is caused to a workman by accident arising out of and in the course of his employment." The first essential, then, is that personal injury must have been caused. Personal injury may be regarded as somewhat wider than bodily injury as these words are usually understood. It covers any physiological injury, *e.g.*, a man suffering great nervous shock or insanity as a result of witnessing a terrible accident might be regarded as suffering personal injury. But it is important to notice that it is nowhere provided that compensation should be paid for an injury; the payment of compensation is always for the *results* of the injury, (*cf.* sec. 3(1) also provisos (a) and (c), and sec. 4(1) A, B, C, and D). So that a man suffering from shock would not get compensation unless the shock resulted in his being disabled.

63. THE results which give rise to a claim for compensation include death, and permanent and temporary disablement; the disablement may be total or partial. Death requires no definition; the definitions of the various types of disablement may be deduced from sections 2(1) (a) and 2(1) (b). The meaning and application of the definitions will be considered later when the scales of compensation come under discussion.

64. THE words "If personal injury is caused to a workman by accident arising out of and in the course of his employment" are, of course, taken from section 1 of the British Act. But there is a slight difference, for the British Act reads "If..... personal injury by accident arising out of and in the course of the employment is caused to a workman..." The result is that, whereas in the British Act the words "arising out of and in the course of employment" qualify the words "personal injury by accident," in the Indian Act the words obviously qualify the word "accident". One effect is that the distinction occasionally drawn in England between the meaning of "by accident" and the meaning of "by an accident" disappears so far as the Indian Act is concerned. But this distinction is rather a fine one, and the difference should rarely come into play. The words "injury" and "accident" can probably be

regarded, as they are in England, as almost interchangeable. Compare the wording of section 17 and section 18, where they are used in the same sense.

65. It may be taken for granted, then, that the injury must arise from an accident. The next question is—What is an accident? Now a reference to sub-section 3 (2) will show that, in certain circumstances, the contracting of certain diseases is to be regarded as an accident. But this is a special meaning expressly given to the word by this sub-section. If the sub-section was not there, no one would suggest, for example, that the contracting of lead poisoning by a press operative who had got it by inhaling lead in microscopical quantities for a year was an accident. And it cannot be too strongly emphasised that the words of an Act like this “must be construed according to their ordinary and popular signification,”* unless express directions are given to the contrary.

66. In this case, an express direction is contained in sub-section (2) of section 3. But it only applies to a few rare cases; in other cases the ordinary meaning of the word “accident” is to be taken. What, then, is this meaning? There are

* Lord Shaw in *Trim Joint District School v. Kelly*, B. W. C. C., VII, p. 314. The whole case turned on the meaning of the word accident, and will repay study.

two elements that must be present to constitute an accident. The first is that it must be an *unforeseen* occurrence. An event which has been intentionally brought to pass or which is expected by the man who suffers from it is not an accident. Lord Macnaughten, in a much-quoted definition, has described an accident as "an unlooked-for mishap or an untoward event which is not expected or designed"*. One obvious, but important effect of this is that an injury caused or instigated by a workman to himself cannot possibly be held to have arisen by accident. No compensation, therefore, can be claimed for self-mutilation. It is for this reason that self-inflicted injuries are not included among the exceptions mentioned in the proviso to sub-section 3 (1).

67. A QUESTION which may cause some difficulty arises when the injury is caused by an act not foreseen or intended by the workman, but intended by some one else, *e.g.*, if a tramway driver, driving his car during a strike, is hit by a stone thrown by a striker, is that an accident? The English and Scotch Courts were at variance on this question, which has now been decided for Great Britain by a

* *Fenton v. Thorley*, W. C. C., V., p. 6. Three of the judgments in this case contain general definitions of accident.

judgment of the House of Lords in an Irish appeal *. This case was decided by majority of one; the four majority judgments are to the effect that an injury designed by some person other than the workman is accidental if it is not foreseen by the workman; the other three are in the contrary sense. Where such eminent authorities differ, it would be presumptuous to attempt a definite statement either way. It is, however, relevant to point out that the Fatal Accidents Act (XIII of 1855) covers cases of this kind. This assists to show, as Lord Shaw, referring to the similar English Act in the case cited, pointed out, in what sense the word "accident" is ordinarily used.

68. THE second essential element is that an accident must be sudden. A gradual process cannot constitute an accident, without an express provision to this effect (such as is contained in sub-section 3 (2)). Lord Reading, speaking of the English Act of 1897 which first contained the words now under discussion, stated, "The Legislature.....inserted the words 'by accident' in order to exclude the right to compensation for injuries not caused by some sudden

* *Trim Joint District School v. Kelly*, B. W. C. C., VII, pp. 274 to 329. This and the case previously quoted contain what is practically a complete definition of accident for the purpose of the British Act. The majority in this case included Viscount Haldane, L.C., Earl Loreburn, Lord Shaw and Lord (now Earl of) Reading. Lords Dunedin, Atkinson and Parker formed the minority.

and untoward event"* . A man who contracts rheumatism through working in a damp coal mine does not sustain an accident. The event must be something to which a definite time can be assigned.

69. COMBINING the effect of what has been stated an accident may be defined as "a sudden and unlooked-for mishap which is not expected or designed by the workman himself". This is in accordance with the House of Lords decision quoted above; if the contrary view is held, the words "any person" should be substituted for the words "the workman himself".

70. THE phrase "arising out of and in the course of employment" is one of worldwide reputation. Originally introduced in the British Act of 1897, it has been copied by most of the American and Dominion Acts, and finds counterparts in other languages in foreign Acts. Its meaning has been the subject of numerous decisions in England, in America and elsewhere; indeed, as the Departmental Committee of 1920 remarked, "It is safe to say that no other form of words has ever given rise to such a body of litigation". (Report; paragraph 29.) A volume could be written upon this phrase alone, but it is quite impossible to deal with it at any length here. Those

* *Trim Joint District School v. Kelly*, B. W. C. C., VII, p. 329.

who are interested in the detailed and particular applications of the phrase will find a close study of the English case-law almost indispensable.

71. AT the same time, that is no reason why the reader who is not a lawyer, but who wishes to grasp the scope of the Act should take fright. It is quite possible to obtain, without reference to either commentaries or rulings, an understanding of the phrase which will cover 99 out of 100 of the compensation claims that will arise. The fine distinctions which have filled so many volumes with long judgments very seldom arise; the great majority of cases are quite straightforward. And it cannot be too often emphasised that, in interpreting a phrase like this, the words are to be taken according to their ordinary meaning and not according to tests or rules suggested for particular cases. The Act is intended to be simple; it is meant primarily for workmen, and legal intricacies, while they may be inevitable in some cases, are always to be regretted. To quote Lord Haldane, speaking of this phrase in the British Act, "The Workmen's Compensation Act, 1906, appears on the face of it intended to afford a simple and speedy method of claiming compensation in the cases to which it relates. These are cases of personal injury by accident arising out of and in the course of employment. But around the principle which Parliament laid down in this language there is already

spreading itself in Courts of Justice an atmosphere of legal subtlety which bids fair to defeat the obvious purpose of the Legislature".* Assuming, then, that the method is simple, what is "the obvious purpose of the Legislature" ?

72. It will be convenient to take the second half of the phrase first, as it is, on the whole, broader in its application. The accident must arise "in the course of the employment". It should be noticed that "employment" does not mean the same as "engagement". A workman may be engaged by the day, or the week, or the month, or for longer periods, but it is only certain portions of such periods that come within the course of his employment. A rough, but fairly useful test, is to see if the workman's liberty was in any way subject to control on account of his work at the time when the accident occurred.

73. OBVIOUSLY, the time of the accident is an all important factor in deciding what constitutes the course of employment. In the general case a man does not enter on his employment till he reaches the place where he carries on his work. It will not always commence then, but if he is on the premises and preparing to work, *e.g.*, getting out

**Davidson v. M. & Rob.*, B. W. C. C., Vol. X, p. 685.

tools, or holding himself in readiness for the machinery to start, his employment has commenced. Similarly his employment may continue after his actual work has ended, but will normally be finished by the time he leaves the place of employment. Thus the place where the accident occurred will always be important. But in some cases it must be remembered that the place is very wide; it will include any place which the workman has to visit in doing his duty, whether that is on the employer's premises or not.

74. THE commonest case likely to cause difficulty is that of a workman going to or from his place of employment. If he meets with an accident in so doing, does the accident arise in the course of his employment? The answer in most cases is "No," but not in every case. If the freedom of a workman is in any way restricted by the terms of his engagement, he will still be in the course of his employment. Thus so long as he is on the employer's premises for some purpose connected with his work, *e.g.*, going away, he has not left his employment. But when he is outside the factory gate and has complete liberty of action, the employment ceases. If, however, the terms of his engagement compel him to travel to his home in a specified manner, he will not end his employment till he has freedom

of action, *e.g.*, if the employer provides a train by which the workman is expected to travel, the train journey will be regarded as included in the employment.

75. ANOTHER likely case is that of intervals occurring in the course of the work. Do these constitute a break in the employment? If the workman interrupts his actual work for any necessary purpose, *e.g.*, getting a drink, he is still in the course of his employment. And in England, the words are usually extended to cover anything that the workman may reasonably do during his work—anything that it is understood he may do. Where a workman spends his intervals on the employer's premises, he will probably be held to be still in the course of his employment, although he may be having a meal or a smoke; but leaving the premises to get a meal would normally constitute a break in the employment. Much will depend on circumstances, and on the freedom of action open to the workman.

76. IN considering the meaning of "the course of employment," regard has to be had to the circumstances in which the accident arose; in coming to the phrase "arising out of" the employment, the all-important question is the cause of the accident. To put it very simply, the accident, if it is to come within the meaning of the phrase, must be in some

way due to the employment. To quote Lord Sumner, "There is, however, in my opinion, one test which is always at any rate applicable, because it arises upon the very words of the statute, and it is generally of some real assistance. It is this; Was it part of the injured person's employment to hazard, to suffer, or to do that which caused his injury? If yea, the accident arose out of his employment. If nay, it did not"*.

77. ANOTHER form in which the question has frequently been put in England is, "was the accident reasonably incidental to the employment?" and this, though not quite so simple as Lord Sumner's question, is frequently useful. The cases that arise are of two common types, those in which the accident is caused by something in the employment itself, and those in which it was caused by something external to the employment. The former type of case is usually fairly simple: it would include accidents caused by some defect in the machinery, or by some slip on the part of the workman injured or some one else employed, or in some such manner. Here, if a direct connection can be traced between the employment and the accident, the accident arises out of the employment. The majority of the cases will be of this kind. For

* *L. & Y. Railway v. Highbly*, B. W. C. C., Vol. X, p. 241.

example, the accident arises out of the employment if the workman's clothing is caught in the machinery on which he has to work, or if he slips from a roof he is building, or if some one starts a machine he is cleaning, so that he is caught in it, or if he is struck by a belt breaking, or if the train he is driving dashes into some wagons.

78. THE second type of case is rather more difficult. Typical cases are those arising from what are known as "natural causes," or from acts of persons unconnected with the employment, or from the acts of animals. Here care is required to differentiate between a risk which is incidental to the employment and one which is not. A workman is not entitled to compensation merely because he was engaged on his work when the accident overtook him, even though that he can show that if he had not been where he was the accident would not have befallen him. He must show that the nature of his employment was such that he ran a substantially greater risk of that kind of accident than he would have done if he had not been engaged in the employment in question.

79. FOR example if men engaged in laying the foundations of a house are struck by lightning, this will not arise out of their employment, but if a man repairing the top of a factory chimney is so

struck, this does arise out of his employment, because his work exposed him to this particular risk to a special degree. If a tram, owing to a stone on the rails, leaves the line and dashes into a factory compound, killing a worker there and injuring the driver, the accident does not arise out of the factory worker's employment, for he ran no more risk of such an accident than any person using the road. But it does arise out of the driver's employment, because he runs the risk of such accidents to a greater extent than the ordinary man. The question in such cases may be put in the following form—is the risk one of the risks of the employment, or is it one of the risks of existence?

80. THE most difficult cases, on the whole, are those in which the accident has been caused by the workman acting in an irregular manner, i.e., not in the manner prescribed by the employer. A reference to proviso (b) (ii) to sub-section 3 (1) will show that cases of wilful disobedience on the part of the workman are expressly excepted. The insertion of this exception shows that there must be cases of disobedience which arise out of the employment, for otherwise the exception would be unnecessary. Similarly, there are cases in which workmen exceed their instructions, and meet with accidents in consequence. The decision in all cases of this kind

will depend on whether the workman, when he did the act which led to the accident, was acting within the sphere of his employment or not. Was he engaged on work which he was employed to do or not? If he was, the fact that he did not do it in the exact manner prescribed is not of much importance, nor is the fact that he infringed a rule laid down by the employer (unless it brings him within the exception quoted). If, however, he was doing something which lay outside his job altogether, the accident does not arise out of the employment at all.

81. FOR example if a man is killed by his clothing catching in the machinery, the accident arises out of the employment, although the employer had issued special clothing for him to wear and he was not wearing it. Again, if a man is accustomed to watch his neighbour's machine when the latter goes out for a drink, and the employer has not prohibited this, and has made no definite arrangements for relief, an accident arising from his work on that machine will arise out of his employment, although he is not paid by the employer for any work he does on that machine. But if, out of curiosity, he gets a man working a new machine to allow him to operate it, he goes outside the scope of his employment, and an accident to him then does not arise out of his employment. Similarly, to take a case that is not

uncommon in Indian factories, an accident sustained by a person in attempting to steal oil from bearings does not arise out of that person's employment.

82. BUT every injury which is caused by accident arising out of and in the course of employment does not give rise to a claim for compensation. There are five exceptions contained in the three provisos attached to section 3 (1). Of these the first and the last state that there will be no right to compensation in the case of injuries which do not produce certain *results*; the other three remove the right to compensation for injuries which arise from certain *causes*.

83. THE first exception is contained in proviso (a) and is a very simple but a very important one. It provides that if injury does not result in the disablement of the workman for more than ten days, the employer is not liable to pay. It thus excluded from the Act all the cases of trivial injury. The provision is designed (a) to exclude cases in which the administrative expenses would consume a large part, if not all, of the compensation, and (b) to minimise the risk of malingering. It will be seen later that even if the disablement exceeds ten days, no compensation is payable on account of the first ten days. These ten days are known as the "waiting period". (cf. sections 4 (1) D and 11 (5).)

84. THE next three exceptions are grouped under proviso (b). If the accident arises out of and in the course of a workman's employment, it is the employer who has to prove that the case is covered by an exception of this kind. In each case, the employer is relieved from liability if the accident is "directly attributable" to a particular cause. This is a shade more emphatic than the corresponding British provision (section 1 (2) (c) of the British Act), which does not contain the word "directly". The meaning of "directly attributable" is that the employer must show that the accident was due to one of the specified causes—drunkenness, disobedience, etc., and that had it not been for that cause the accident would not have occurred. But the words must not be taken to mean that the employer must prove that the accident was solely due to the cause specified. For, to take an example, an accident due solely to the intoxication of the workman does not arise out of his employment at all*; so that it is excluded without this exception coming into play. Such an interpretation would make this exception superfluous. The application of the principles stated above to each of the three exceptions is easy.

85. I. THE exception contained in proviso (b) (i) covers the case of the workman being under

* The well-known case of *Frith v. Owners of "Louisianian,"* B. W. C. C., VII, p. 410, is a good example.

the influence of drink or drugs. Here the true test is not the stage of intoxication reached; that may be of importance as bearing on the question at issue, but it is not the question to be answered. The question is—"If the workman had not been under the influence of drink or drugs, would the accident not have occurred?" If it is proved that the accident would not have occurred but for the drunkenness, compensation is not payable. If the employer fails to prove this, he must pay, even though he shows that the workman's drunkenness made the accident more likely. If the employer proves this, the fact that other causes helped to make the accident possible does not matter. Note that in this exception, as in the others, it is the conduct of *the* workman that counts. The employer by showing that the accident was due to a workman being drunk does not get out of his liability to other workman injured in that accident. He is only free from liability to that particular workman.

II. THE next exception relates to cases arising
§6. from the disobedience of the workman. In the first place the disobedience must be wilful. Wilful means more than willing, and a little more than intentional. It implies deliberation. A workman who acts thoughtlessly on a sudden impulse does

not act wilfully.* But the exception does not cover wilful disobedience to every order of the employer. The order must be "an order expressly given, or a rule expressly framed, for the purpose of securing the safety of workmen," i.e., for the prevention of accidents. Examples of such rules are rules prohibiting the use of naked lights in certain mines, or the cleaning of machinery in motion, or entering a lift with a heavy load, or a rule insisting on the wearing of particular clothing when dealing with machinery. On the other hand the exception is not restricted to orders made by the employer. An order given by Government or by a factory inspector is covered. But it must, of course, be shown that the order was conveyed to the workman and was known to him; otherwise his disobedience of it could not possibly be wilful.

87. III. THE next exception is similar in character. Here again the act must be wilful, and the device removed or ignored must be one provided for safety purposes. But in this case it is necessary to show that the workman knew the

* The word wilful appears in the corresponding provision of the British Act; its meaning is discussed by Lord Loreburn, L.C., in *Johnson v. Marshall*, VIII, p. 12. (But it should be added that in cases not involving workmen's compensation, the English Courts tend to consider an act as done wilfully if the person doing it "knows what he is doing, intends to do it and is a free agent". (Bowen, L. J., in *re Young and Harston*, 31, Ch. D. 174.)

purpose of the device ; under the preceding exception a workman might be regarded as wilfully disobeying an order which he thought was made for some other purpose than safety, *e.g.*, to prevent him stealing, but which was in fact made for his safety. The question here, as in the preceding exception is, "Can it be said that the accident would not have occurred but for this wilful act of the workman ?" If it can, the exceptions apply. If it cannot, they do not apply.

88. THE last exception, which is contained in proviso (c), relates only to the building trade, *i.e.*, to men falling under clause (vi) of Schedule II. It excludes them from the right to compensation for all but the most serious injuries. Unless they are killed or completely and permanently disabled, no right to compensation arises. In the case of the building trade, the Act goes beyond one of its general principles, *viz.*, that only organised industries should be included ; this restriction is introduced in order to minimise the difficulties that will arise from such an extension.

89. THERE is a special type of injury that has not yet been considered ; this is the contracting of disease. The provisions relating to this will be found in sub-sections (2), (3) and (4) of section a.

There are two distinct cases to be considered; the first is that of the specified diseases, *i.e.*, anthrax, which is expressly mentioned in sub-section (2), and lead-poisoning and phosphorus poisoning, which are included in Schedule III. Sub-section (3) gives the Government of India power to enlarge Schedule III by adding additional diseases and the corresponding occupations to this schedule.

90. THESE special diseases are occupational diseases, *i.e.*, they are diseases to which men engaged in particular occupations are especially liable. And in every case in which an occupational disease is mentioned, the corresponding occupation is specified. For a workman to come under the provisions of sub-section (2), he must show not merely that he has got the disease, but also that he was engaged in the particular occupation mentioned. Further, unless the disease is anthrax, he must prove that he entered the service of his employer at least six months before, and that he has worked for no other employer during these six months. These provisions are inserted because occupational diseases (other than anthrax, which is very sudden in its onset) are almost always contracted gradually. The contracting of lead-poisoning, for example, is as a rule an extremely slow process. And if the workman has not six months' service with that

employer, it is practically certain that he had the poison in him before he took up his job with that employer.

91. It has already been pointed out that the contracting of a disease is not as a rule an injury by accident ; for one thing, it is not usually sudden : (see paragraph 68). But here it is expressly provided that, where the conditions mentioned in paragraph 90 are satisfied, the contracting of the disease is an injury by accident. Further, unless the employer proves the contrary, the accident will be deemed to have arisen out of and in the course of employment, so that the workman's case is complete without any further proof. It will very seldom be possible for the employer to prove that the accident did not arise out of or in the course of employment. But he might be able to prove this occasionally, *e.g.*, he might prove that a workman in the wool trade who contracted anthrax had got it through a cut while being shaved with an infected brush.

92. In the case of diseases that are not specified, the position is reversed ; here the workman will usually find it difficult to establish a claim to compensation. (See section 3 (4).) He will have to prove :—

(a) that there has been an accident within the ordinary meaning of the word, and not within the special meaning contained in sub-section (2) ;

(b) that that accident arose out of and in the course of his employment, and

(c) that the disease was solely and directly attributable to a specific injury sustained in that accident.

The difficulty will usually be to prove that there was an accident, and to prove that the accident, or rather the injury sustained in it, was the sole cause of the disease. If, for example, a man got tetanus by falling on infected ground, or he got a brain disease by a brick falling on his head, or if he got pneumonia as an immediate result of a pump falling in a mine, involving his standing in water for some hours, he would be able to recover compensation. On the other hand, if his occupation resulted in his developing any disease gradually, *e.g.*, if he got consumption through working in a dusty room, or rheumatism through working in a damp place, compensation would not be payable, for no accident would have occurred. And where there has been any aggravation of an injury that results in disease, compensation will not be payable for effects of the disease. A man who, having sustained a cut, lets dirt into the wound later, and so contracts tetanus or blood-poisoning, will be unable to prove that the disease was due solely to the injury; it was due in part to the treatment he

applied or to his negligence.

93. At the same time, it is suggested that the word "solely" must not be interpreted too literally. Few events in life are solely due to one cause, in the most literal sense of "solely;" there may be one obvious cause, but there are always some contributory causes. Where, to take an example already cited, a man falls on ground infected with tetanus germs, and dies in consequence, it is not intended that the claim should fail because the employer proves that the workman was in a low state of health. A hundred different circumstances may have conspired to make him fall when and where he did, but the death is solely attributable to the accident in the sense that there was no fresh cause intervening. The word is intended to exclude diseases for which something done after the accident is partly responsible and to protect the employer from the results of careless or wrong treatment of injuries. The question of aggravation will come up again (see paragraphs 143 to 145); in the meantime, it should be pointed out

that this difficult sub-section must be read as qualifying section 4 in some cases.*

* This sub-section will not prove easy to interpret, but it is clearer than the existing law in England. Reference to decisions under the British Act has been avoided, partly because the provisions of the two Acts are different, but also because, to quote Lord Buckmaster, "the Law Reports are full of various decisions, each attempting—and attempting in vain—to provide some fixed canon of interpretation from which a rule can be established for future guidance." The difficulties in England began with a majority decision of the House of Lords in the well-known case of *Brintons v. Turvey* (1905), W. C. C., Vol. VII, pp. 1–8, in which it was held that the contracting of a disease could be itself an accident; in this case the accident was deemed to be the alighting of an anthrax bacillus on a man's eye. The British Act of 1897 contained no provision for disease, and it is possible that if this had not been the case, the minority view might have prevailed. It is difficult to reconcile this finding with the view that "accident" should be taken according to the ordinary meaning of the word. The various decisions are summarised in the divergent judgments of Lord Buckmaster (quoted above) and Lord Atkinson in *Grant v. Kynoch* (1919), B. W. C. C., XII, pp. 78 to 113.

workmen's dependants. The definition of dependant is given in section 2 (1) (d): it always includes the following relatives of the deceased workman:—

(a) the widow or widower,

(b) parents,

(c) children under 15,

(d) unmarried daughters over 15,

(e) brothers under 15,

and (f) unmarried sisters.

If a son of the workman is dead, his children under 15 rank as dependants. If both the parents of the workman are dead, the paternal grandparents rank as dependants. Illegitimate children are not included, but posthumous legitimate children must be counted as dependants. And, under sections 3 (18) and 3 (53) of the General Clauses Act, 1897, father includes an adoptive father, and son includes an adopted son, in the case of any one whose personal law permits adoption. Where the question is whether a person claiming as a dependant is under 15 or not, his age must be reckoned as it was when the right accrued, i.e., on the date of the workman's death, and not on the date of the accident or the date of the claim.

97. WHILE the Act speaks of "dependants," it is important to notice that, so far as the employer is concerned, the question of whether any or all of the dependants were actually dependent on the deceased is quite immaterial. If any one of the relatives mentioned above survives the workman, the whole of the compensation must be distributed. If there is no dependant other than the father, and if the father has not lived with the deceased or heard from him for some years, the father has none the less a full right to the whole of the compensation. The only case in which the employer gets any of the money back is the rare case when there is not a single surviving relation falling in the specified classes.

98. THE whole responsibility for the distribution of the money is thrown on the Commissioner; he can distribute it as he thinks fit. Thus he can award the whole of the compensation to one of the relatives although there may be many others who are "dependants" within the meaning of the Act. But he will naturally be guided mainly by the question of actual dependence; he should refuse compensation to those who have not suffered financially from the death of the workman (unless there are no other dependants), and give most compensation to those who have suffered most. If a widow is left with young children, it is not necessary for him to award separate sums to the children.

99. THE Commissioner is empowered to deduct the cost of the workman's funeral expenses (up to Rs. 50) before distribution, if he sees reason for doing so; this will be paid to those who bore the expense of the funeral. If a close dependant has paid for the funeral expenses, a specific deduction need not be made; the Commissioner can take that into consideration in awarding compensation.

100. If a dependant to whom money has been awarded is subject to no legal disability, he must be paid the money at once. If he is subject to a legal disability, *e.g.*, if he is under 18, or is of unsound mind, the Commissioner can invest the money and pay it out as he thinks fit, or otherwise apply it for the dependant's benefit. For example, he could buy a field with it, or entrust it to a guardian or bank it and pay it out in instalments. See section 8 (5). The employer is entitled, under section 8 (4), to a statement showing how the money has been spent. If no dependants can be found, he will obtain a refund of the money, less the sum spent on funeral expenses.

101. IN the case of masters and seamen, compensation is subject to a limitation not mentioned in the Act. Section 503 of the British Merchant Shipping Act, 1894 (57 and 58 Vict. c. 60) limits the liability of shipowners, where any loss of life or personal injury

is caused to any person being carried in the ship to £15 for each ton of the ship's tonnage. This provision applies to the whole of India, irrespective of the Act under which a ship is registered: it apparently covers inland vessels also. It is not likely to affect compensation, however, except in very rare cases, for in the case of a ship of so small a tonnage as 100 tons the limit is £1,500 or over Rs. 20,000, which should be large enough to cover most accidents, even though passengers' claims have also to be considered

102. Part B of section 4 (1) prescribes the compensation for permanent total disablement. Total disablement is defined in section (2) (1) (i); this sub-section also details certain specific injuries which are to be regarded as resulting in permanent total disablement. The effect is that permanent total disablement is caused:—

- (a) when a workman is permanently incapacitated from all work which he was capable of performing at the time of the accident,
- (b) when a workman is completely and permanently blinded,
- (c) when a workman sustains any combination of the injuries specified in Schedule I, such that the percentages of loss of earning capacity shown opposite these injuries in

the Schedule add up to 100 or more. For example, a man who loses an arm and a leg, or both arms, or both legs, or the right arm above the elbow and the sight of one eye, is entitled to compensation for permanent total disablement. The principle of the Schedule is discussed below (see paragraph 107).

103. COMPENSATION for permanent total disablement is fixed at 42 months' wages in the case of an adult and 84 months' wages in the case of a minor. There is a maximum of Rs. 3,500 for both minors and adult and, for reasons explained in paragraph 125, there are minima of Rs. 336 for an adult and Rs. 672 for a minor. The higher rate for the minor is based on the consideration that, while he is usually on a much smaller wage than an adult, he may be expected to live longer after disablement.

104. It may happen that a man who has sustained some injuries prior to an accident sustains further injuries in the accident, *e.g.*, a man who is blind in one eye may meet with an accident and lose the other eye. Or a man may lose a leg in one accident and a hand in another. If the combined injuries—those previously sustained and those sustained in the last accident—have percentages which add up to 100 or more, the injury by accident results in permanent total disablement. No deduction can

be made from the sum on the ground that compensation was paid for the earlier injuries. But the amount will normally be smaller because a maimed man earns, on the average, a lower wage than a whole man.

105. COMPENSATION for permanent partial disablement is provided for in section 4 (1) C. The definition of permanent partial disablement in section 2 (1) (g) states that it means such disablement as reduces a workman's "earning capacity in every employment which he was capable of undertaking at that time" (i.e., the time of disablement), and it goes on to say that "every injury specified in Schedule I shall be deemed to result in permanent partial disablement". Two separate types of injury are thus provided for in assessing compensation—injuries specified in Schedule I and injuries which cause permanent partial disablement but which are not specified in that Schedule.

106. THE scheme on which compensation for such injuries is based may be briefly explained. The general principle is that compensation should be proportionate to the loss of earning capacity sustained. If a man after an accident can earn only three-quarters of his former wages, he has lost a quarter of his earning capacity and he should therefore get

been completely disabled, compensation would have been Rs. 12×84 . The percentage for the loss of a thumb is 25: compensation therefore amounts to Rs. 252.

109. If the injury is not in the schedule, the calculation is made in a similar way; the only difference is that, as already explained, the loss of earning capacity is not given in the Act: it has to be estimated. Once the estimate has been made, it can be expressed as a percentage of total loss of earning capacity, and the calculation then proceeds as before. For example a man drawing Rs. 25 gets a spinal injury which reduces his earning capacity by half: compensation is 50 per cent. of Rs. 25×42 = Rs. 525. The estimate of the percentage will not usually be easy. The question to be answered is—what wages can this man now expect to receive? It should be remembered that partial disablement when permanent must involve a loss of earning capacity, not merely in the occupation the man had at the time of the accident, but in every occupation which he was then capable of carrying on: consequently, in calculating the loss of earning capacity, the possibility of the man obtaining an entirely different type of job must be borne in mind. Finally, it follows from the provisions of this sub-section that, unless the injury is specified in the schedule, a man who is permanently

injured gets no compensation in the event of his suffering no loss of earning capacity. If in spite of his injuries he is equal to earning the same wage after the accident as before, and if the injury is not a scheduled one, no compensation can be claimed (except, of course, the compensation payable for the time he was kept from work while the injuries were fresh). This, of course, does not mean that an employer can offer the man a job on the same pay in exchange for compensation, for the whim or desire of a particular employer is not a measure of earning capacity. A seriously injured man who is given his previous wages by his employer does not as a rule *earn* those wages.

110. If more injuries than one are caused by the same accident, the explanation to this subsection indicates that the total amount of compensation payable for the different injuries should be added up. But in no case can the sum payable for permanent total disablement be exceeded. Obviously, a man cannot lose more than 100 per cent of his earning capacity.

111. COMPENSATION for temporary disablement is regulated by part D of section 4 (1). Here different considerations come into account. A man who is rendered temporarily unfit for the kind of work he has been accustomed to do cannot be expected

to take up other work of a different kind. He will not want, nor is it reasonable that he should be asked, to change his occupation; what he will need, as a rule, is rest to enable him to resume his former occupation as quickly as possible. Therefore temporary partial disablement is defined in section 2 (1) (g) as "such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident". Further, except in a special case, no distinction is made between total and partial temporary disablement, as far as the amount of compensation is concerned. An employer cannot insist that a partially disabled workman who is not able to earn full wages shall return and take up such work as he is capable of doing. Nor can he ask that the compensation should be reduced because the man is fit enough to earn some money if he chooses to try. So long as the man cannot earn his former wage, he cannot be compelled to work.* But if he does work, and earns a wage, a reduction of compensation may be possible. (See paragraph 114.)

112. COMPENSATION for temporary disablement takes the form of half-monthly payments. As has already been pointed out, no compensation is payable

* But there is nothing to prevent an employer bringing pressure to bear on a man who could work if he wanted to by threatening to refuse to re-employ him later.

in respect of the first ten days of disablement; there-after the right to compensation begins. The first half-monthly payment is due on the 26th day after disablement, and a subsequent payment falls due after the expiry of each half month from that date. These payments can go on until the end of 5 years and 26 days from the date of the disablement, if the man does not get better before then. As will be seen later, they can be commuted to a lump sum: but even if they are not so commuted, it is only in rare cases that they will go on for more than one year. If, as will usually be the case, the end of the disablement does not coincide with the end of a half month, a proportionate payment is to be made for the broken period (section 4 (2)).

113. THE amount of each half-monthly payment, in the case of an adult, is one-quarter of his monthly wages, so that he gets compensation at the rate of half his wages. In the case of a minor, each half-monthly payment is a third of his monthly wages, that he is compensated at the rate of two-thirds of his wages. But if during the continuance of the disablement he reaches 15, the half-monthly payments are increased to half his monthly wages so that he then draws compensation at the rate at which he was drawing wages before the accident. This will, however, be lower as a rule than the wage he would have got after 15 if he had not been injured.

In every case, half-monthly payments are subject to a maximum of Rs. 15; i.e., not more than Rs. 30 per month. They are also subject to a minimum of Rs. 4. (See paragraph 125.)

114. THE first part of the proviso to section 4 (1) has been discussed in paragraph 18. The last part of this proviso deals with the case of the man who, although still partially disabled, is actually earning a wage. In this case his half-monthly payments must not exceed the difference between half his monthly wages before the accident, and half the amount of his monthly wages after. To put it more simply, the rate of compensation must not exceed the difference between the wage-rate before the accident and the wage-rate after. Compensation must not be a source of profit. For example a workman on Rs. 40 gets half-monthly payments of Rs. 10 each. If he earns, while disabled, anything up to Rs. 20 a month, he still gets Rs. 10 twice a month as compensation. But if he earns Rs. 24 a month, his half-monthly payments go down to Rs. 8 each. Again, a minor on Rs. 12 gets half-monthly payments of Rs. 4 each up to age 15, and of Rs. 6 each after that. If, before he reaches 15 he is earning while disabled Rs. 6 a month, his half-monthly payments are reduced to Rs. 3 each, and they are not increased when he reaches 15.

15. REVIEWING the scales of payment, it will be seen that in every case except that of the death of a minor, compensation depends on the wages of the workman. Now the calculation of the wages of a workman is no easy matter in many cases. Workmen are paid by differing periods—daily, weekly, fortnightly, monthly; they receive bonuses at intervals in many industries; they get concessions in the matter of houses, clothing, grain, etc. All those have to be taken into account, and in every case a figure must be deduced which represents the monthly wages of the workman.

116. THE definition of wages given in section 2 (1) (a) has been discussed at some length in paragraphs 52 to 55, and reference should now be made to those; the discussion need not be repeated here. But the meaning of wages, as contained in the definition, has to be substantially modified before compensation is calculated. It is these modifications which are discussed in the following paragraphs.

117. THE rules for the calculation of wages for purposes of compensation are contained in section 5 and Schedule IV. Section 5 contemplates two distinct cases:—

- (i) where the workman has 12 months' continuous service with his employer before the accident;

- (ii) where the workman has less than 12 months' continuous service with his employer before the accident.

Continuous service means service which includes no break of more than 14 days (see the explanation to the section). The rules are designed to represent in each case the actual rate of wages the workman is receiving. A workman is not penalised for irregularity of work, except in so far as he penalises himself, by lowering the amount which he earns, by his irregular attendance.

118. WHILE, as will be shown later, the rules given should not be difficult to apply, the reasoning behind them requires some explanation. The first point to notice is that the wages of what may be called the regular workers (i.e., those falling under clause (a)) are calculated on a different principle from the wages of the irregular workers (those under clause (b)). In the former case the calculation is based on wages "which have fallen due for payment;" in the latter it is based on wages which have been "earned". This is an important difference. If a man works on an understanding that he will get his wages for any month on the 15th of the following month, his wage for July falls due for payment on 15th August, but he has earned the whole of it by the end of 31st July.

119. THE reason for using the phrase "fallen due for payment" in clause (a) is that, if the calculation was based on wages earned, anomalies would arise in many cases in connection with bonuses, *e.g.*, suppose a cotton mill operative works steadily for several years, getting an annual bonus in January every year. If he was injured immediately after the payment of the bonus, practically the whole of that bonus would have been earned by the work of the 12 months preceding the accident. But if he was injured later on, say in December, very little of the bonus would have been earned in the preceding 12 months: most of it would have been earned by earlier work, lying outside the preceding year. Thus the wages of a steady and regular workman might vary with each month of the year. The phrase "fallen due for payment" will bring in the whole of a bonus paid during the year. A bonus not declared, and dependent on the discretion of the employer cannot be counted, for it is not "capable of being estimated in money" (see section 2 (1) (m)), nor has it fallen due for payment.

120. WHY, then, is the same phrase, *viz.*, "fallen due for payment," not used in clause (b)? A possible reply would be that the same necessity does not arise, for irregular workers do not usually get bonuses. But the real answer is that the use of such a phrase would deprive a number of workmen

of compensation. Any worker on a monthly wage who was injured before his first month's wage was due from that particular employer might have no wages which had fallen due for payment; so his wages would be nil, and his compensation would be on the minimum scale. On the other hand, a man who has done some work has earned some money, and so his wages can be calculated.

121. THE methods should now be fairly clear. The first point to determine is the last period of continuous service. If that is at least a year, the calculation must be made under clause (a). The value of the whole of the wages, bonuses, concessions, etc., which have fallen due for payment during the year preceding the accident must be set out in cash, added together and divided by twelve. A concession such as a free house is, of course, given continuously, and falls due for payment continuously.

122. CLAUSE (b) seems more complicated, but its basis will be better understood if the arithmetical processes are transposed. The first thing to calculate is the cash value of all wages, bonuses, concessions, etc., earned during the period taken. If this is divided by the number of days comprising the period, the result is the average daily wage for that period. This is then multiplied by 30 to give the average monthly wages. It may appear at first sight that the workman gains by this

method, for few workmen work on 30 days in a month; but this is automatically allowed for. The wages of a man working 26 days in a month of 30 days and getting a rupee a day come out to Rs. 26 and not Rs. 30 by the above method. If the man works on only 15 days at a rupee a day, his monthly wages come to Rs. 15. In dividing by the number of days, days in which he does not work are counted in; therefore in multiplying, the number of non-working days in a month is reckoned as well as the number of working days, and 30 is taken as the average number of days in a month.

123. BEFORE going on to consider the effect of Schedule IV, it should be noticed that, whether a workman comes under clause (a) or clause (b) of section 5, the only payments or concessions that can be taken into calculation are those received from the employer who has to pay compensation. Clause (a) speaks of "payment...by the employer" and clause (b) of "earned...from the employer". Thus tips and gratuities given by other persons for work done by the workman, though they may fall within the definition of wages given in section 2 (1) (m), cannot be counted for purposes of compensation. And in no case can wages earned from another employer be taken into account.

124. THE calculation of wages is not complete when the sums reached under clauses (a) and (b) of section 5 have been set down. Reference

has then to be made to Schedule IV, by which wages are rounded to one of fourteen separate sums. The object of this table is to minimise disputes regarding minor differences in the workman's and the employer's estimate of wages, and to avoid the necessity of meticulous calculation in as many cases as possible. For example, if it is certain that the workman's wages lie between Rs. 27-8-0 and Rs. 32-8-0 then it can be decided at once that his compensation is to be paid on a wage of Rs. 30. What is done, in effect by the schedule, is that workmen are grouped in fourteen classes and a typical wage is selected for each class.

125. ONE effect of the schedule is to provide a minimum for compensation in every case, for the lowest wage on which compensation can be calculated is Rs. 8. As a matter of practice, the minima should seldom come into operation except where minors or apprentices are concerned. The appended table shows, for each of the fourteen classes, the compensation for death, for permanent total disablement, and for temporary disablement. The figures for adults and minors are shown separately and in the case of temporary disablement, the last column shows the case of a workman who is injured before he is 15 and who continues to receive half-monthly payments after he reaches 15.

Where the wage calculated under clause (a) or clause (b) of section 5 is:—		THE COMPENSATION IS:—						
		lump sum for death.		lump sum for permanent total di-ablement.		each half monthly payment for temporary disablement.		
		Adult.	Minor.	Adult.	Minor.	Adult.	Minor.	Adult in- jured as minor.
less than a. p.	Less than Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
...	9 0 0	240 0 0	200 0 0	336 0 0	172 0 0	2 0 0	2 10 8	4 0 0
0 0	11 0 0	300 0 0	250 0 0	420 0 0	840 0 0	2 8 0	3 5 4	5 0 0
0 0	13 0 0	360 0 0	250 0 0	504 0 0	1,008 0 0	3 0 0	4 0 0	6 0 0
0 0	17 8 0	457 8 0	2 0 0 0	640 8 0	1,281 0 0	3 13 0	5 1 4	7 10 0
8 0	22 8 0	600 0 0	200 0 0	840 0 0	1,680 0 0	5 0 0	6 10 8	10 0 0
8 0	27 8 0	750 0 0	200 0 0	1,050 0 0	2,100 0 0	6 4 0	8 5 4	12 8 0
8 0	32 8 0	900 0 0	200 0 0	1,260 0 0	2,520 0 0	7 8 0	10 0 0	15 0 0
8 0	37 8 0	1,050 0 0	200 0 0	1,470 0 0	2,940 0 0	8 12 0	11 10 8	15 0 0
8 0	42 8 0	1,200 0 0	200 0 0	1,680 0 0	3,360 0 0	10 0 0	13 5 4	15 0 0
8 0	50 0 0	1,387 8 0	200 0 0	1,942 8 0	3,500 0 0	11 9 0	15 0 0	15 0 0
0 0	60 0 0	1,650 0 0	200 0 0	2,310 0 0	3,500 0 0	13 12 0	15 0 0	15 0 0
0 0	70 0 0	1,950 0 0	200 0 0	2,730 0 0	3,500 0 0	15 0 0	15 0 0	15 0 0
0 0	80 0 0	2,250 0 0	200 0 0	3,150 0 0	3,500 0 0	15 0 0	15 0 0	15 0 0
0 0	...	2,500 0 0	200 0 0	3,500 0 0	3,500 0 0	15 0 0	15 0 0	15 0 0

THE SCALES OF COMPENSATION.

The compensation for permanent partial disablement is to be obtained by multiplying the compensation for permanent total disablement by the figure representing the percentage loss of earning capacity, and dividing by 100 as explained in paragraphs 108 and 109.

126. IN concluding the discussion of this part of the subject, it may be of assistance to give a few examples, in order to show how the rules work out in practice. It will be seen that, although the rules appear to be somewhat complicated, they are by no means difficult to apply as soon as a concrete case is taken. At the same time, it should be emphasised that the rules are intended mainly for the settlement of disputes, and that elaborate calculations ought to be unnecessary in most cases. Where the employer and the workman are in no doubt as to the wage, they will not require to refer to the rules. And there should be no doubt in most cases.

Example 1.—A spinner is paid monthly and draws Rs. 27. He loses the index finger and another finger of one hand. Prior to the accident he had been in his job for the whole twelve months, and during that period he had drawn an annual bonus of a month's pay. His wage must be calculated under clause (a) of section 5. The total wages falling due for payment to him in the twelve months come to

13 times Rs. 27, i.e., Rs. 351. One-twelfth of this is Rs. 29-4-0. Referring to Schedule IV his wage must be taken as Rs. 30. The percentage loss of earning capacity is 15. He therefore gets 15 per cent of 42 times Rs. 30, i.e., Rs. 189. (The table given above further simplifies this calculation by showing that, if the wage lies between Rs. 27-8-0 and Rs. 32-8-0 as it does here, the amount is 15 per cent of Rs. 1,260.)

Example 2.—If the above spinner, in addition to wages and bonus, gets a house at a low rent from his employer, the advantage he gains must be calculated. Suppose the gain to him is Rs. 1-8-0 a month. Then the total wages for the year come to Rs. 369, i.e., monthly wages are Rs. 30-12-0. This leaves the man in the same wage class as before (not less than Rs. 27-8-0 but less than Rs. 32-8-0), so compensation is the same.

Example 3.—A third spinner is in the same category. He is paid Rs. 27 a month, and drew a bonus of a month's pay on 15th January. He then went away to his village for some time and returned on 1st March. He is injured on 15th September, receiving injuries that keep him temporarily from work. The absence from 16th January to 1st March counts as a break of service, and the only period to be reckoned is the period from 1st March to 15th

September. He has earned exactly $6\frac{1}{2}$ months pay in that time; the sum earned is Rs. 175-8-0. The period of employment comprises 199 days. He cannot reckon the bonus for the previous year because it was not earned within the last period of service. Nor can he reckon anything on account of a possible bonus in the succeeding year because that cannot be estimated in money. His monthly wage is therefore Rs. 175-8-0, multiplied by 30 and divided by 199, which comes to about Rs. 26-7-0. It lies between Rs. 22-8-0 and Rs. 27-8-0, and therefore (see table above) each half-monthly payment should be Rs. 6-4-0. The first half-monthly payment falls due on 11th October.

Example 4.—A coal miner works very irregularly, working about three days a week. He is paid by his outturn on each day he works. The last time when he was away for more than a fortnight ended on 6th April. He is killed on 10th June. His period of employment comprises 66 days. His record is consulted, and it is found that during that period he worked on only 25 days in all. His earnings on those days come to Rs. 29-9-0 in all. His monthly wages are Rs. 29-9-0 multiplied by 30 and divided by 66, i.e., Rs. 13-7-0. Referring to the table given above, compensation is seen to be Rs. 457-8-0.

Example 5.—A seaman signs articles for a six months engagement. He has to receive Rs. 22 a month. He also gets free food, the value of which is estimated at 8 as. a day. He goes to sea on 1st June and is drowned on 1st September. His total earnings come to Rs. 66 pay and Rs. 46 on account of food, or Rs. 112 in all. He has been at sea 92 days. His monthly wages come to Rs. 112, multiplied by 30 and divided by 92, i.e., Rs. 36-8-0. The compensation due to his dependants (see table above) is Rs. 1,050.

Example 6.—A boy of less than 15 years of age works in a factory on Rs. 2 a week. He began to be employed on 1st July and is temporarily disabled as a result of an accident on 3rd November, when he has worked for a period covering 126 days or 18 weeks. He has earned Rs. 36 and his monthly wages come to Rs. 36 multiplied by 30 and divided by 126, i.e., about Rs. 8-9-0. He should therefore get half-monthly payments of Rs. 2-10-8 each (see table above).— If, when he reaches 15 he is still unable to work, the half-monthly payments should be increased to Rs. 4 each.

CHAPTER V.

PROCEDURE IN CLAIMS FOR COMPENSATION.

127. THE first step to be taken by a workman or his dependants after an accident is the service of notice on the employer. The provisions relating to notice are contained in section 10, which is adapted from section 2 of the British Act. Notice here obviously means a written notice. The notice must contain :—

- (a) the name and address of the workman injured ;
- (b) the cause of the injury ;
- (c) the date of the accident.

It is not necessary that the notice should contain the details of the injuries : the employer, having got the notice, can ascertain these by exercising his right of medical examination.

128. SERVICE may be made :—

- (i) upon the employer, or upon any of the employers, if there is more than one, or
- (ii) upon any person directly responsible to the employer for the management of any branch of the trade or business in which the workman was employed.

The latter alternative makes it possible for the workman to serve the notice upon the manager of the business, but not on some subordinate such as a foreman, because a subordinate is not *directly* responsible to the employer as a rule. As regards workmen serving under contractors, see paragraph 12. Notice can be served by registered post (but need not be so sent), and can be addressed to the residence or to *any* office or place of business of the person on whom it is to be served.

129. THE time of the notice is of the first importance. It must be given (1) as soon as practicable and (2) before the workman has voluntarily left the employment in which he was injured. Both these phrases are taken from the British Act. The first phrase is elastic. If a workman suffers a minor injury, there should be no reason for delay; he could proceed to serve the notice as soon as his injuries were dressed. If he is carried away in a critical or unconscious state, latitude must obviously be allowed. The second phrase is not elastic. A workman leaves the employment when he signifies, by some definite statement or act, his intention to cease to serve that employer, *e.g.*, if he takes a post with another employer, or is paid off at his own request. Absence does not necessarily end the employment, even if the workman is employed by the day.

130. It is to the interest of both parties that there should not be any delay or difficulty in the matter of the service of the notice. Managers of large works will probably find it useful to copy an English practice, and keep a notice-book on the premises, in which the workman can enter the necessary details before he leaves the premises, if he is able to do so. It is not expressly stated that the notice must be given by the workman himself, and if a workman was seriously injured and the notice were given by a fellow-workman or a relative, this would apparently be sufficient. Provided that the notice contained the details prescribed, the employer would not be injured in any way by such a practice.

131. CERTAIN special cases are covered by special provisions. Section 15(1) contains rules covering the notice in the case of seamen. If the accident takes place and the disablement commences on board ship, notice is not required at all from a seaman. This is because the master, who stands in the place of the employer, must be aware of all accidents happening on his ship, and will normally enter these in the log. If the accident happens elsewhere than on board, or if the disablement commences elsewhere, the notice can be served on the master. If the master himself is injured, he must serve the notice on the employer or "person directly

responsible" in the usual manner, but it will not usually be practicable for him to do so until the ship has reached port.

132. SPECIAL provision is also made to cover the case of the scheduled diseases. As has been pointed out, these diseases do not arise from accidents, in the ordinary sense of the word. But they are deemed to be injury by accident, and provision for notice has accordingly to be made. It is, therefore, laid down that the "accident" shall be deemed to have occurred on the first of the days during which the workman was continuously absent on account of the disease, and he must serve the notice as soon as practicable after that. If having contracted the disease he has voluntarily left his employment before the disease develops, he obviously cannot serve the notice within the period prescribed, but in a case like this, the Commissioner would be amply justified in using the special powers referred to in the next paragraph.

133. THE second proviso to section 10 (1) allows the Commissioner to admit a claim, although notice has not been given in due time "if he is satisfied that the failure to give the notice.....was due to sufficient cause". He has thus fairly wide powers, making it possible for him to ensure that

a workman is not harshly deprived of compensation on account of a technicality. At the same time, the necessity for prompt notice is so vital for the employer's protection that the Commissioner will probably be very chary in admitting claims in this fashion.

134. THE insistence on prompt notice is designed to serve two purposes. In the first place it should enable the employer to verify the facts of the accident as soon as possible after the event. Eye-witnesses of the occurrence will be on the spot, and it will be a simple matter for him to form conclusions as to the cause and nature of the accident. The danger of a fraudulent claim is reduced to a minimum. If the employer makes inquiries at once and finds that the alleged accident did not take place, he would do well to record statements. Presumably he could also protect himself by filing a statement before the Commissioner, although no claim had actually been made. While employers are not bound to take any action on receiving a notice (for a notice is in no sense a claim), the fact that an employer took no action might, in some cases, weaken any protest he made at a later stage.

135. The second purpose of an early notice is to enable the employer to have the workman medically examined without delay. The provisions

relating to medical examination are in section 11. The employer's right to have a medical examination conducted lasts for three days from the time "at which service of the notice has been effected". This means normally the time at which the employer receives the notice. If the notice is sent by registered post (see section 10 (3)), section 27 of the General Clauses Act, 1897, provides that, unless the contrary is proved, the service shall be deemed "to have been effected at the time at which the letter would be delivered in the ordinary course of post".

136. THE employer must provide the examination free of charge and the examination must be conducted by a qualified medical practitioner, as defined in section 2 (1) (i). This follows the definition contained in the Factories Act and the Mines Act, and includes doctors registered under the British Medical Act of 1858, or under the various Indian Acts for the registration of medical practitioners.

137. THE wise employer will always arrange for medical examination unless he is satisfied as to the effects of the injuries, and is willing to pay whatever may be demanded. In the case of any dispute, the evidence of a medical man who examined the workman shortly after the accident will be of the utmost value. And although three days are allowed, the

sooner the examination takes place the better. The doctor should, as a precaution, record in writing the results of the examination for future reference. Normally there should be little difficulty about medical examination, but the workman may place obstacles in the way :—

- (1) He may leave the vicinity before the three days allowed to the employer have expired.
- (2) He may refuse to be examined.
- (3) He may obstruct the examination.

THE first difficulty is dealt with in section 12

138. (3). If a workman leaves the vicinity of his place of employment before the three days have elapsed, his right to compensation is suspended. The workman is, of course, free to go as soon as the medical examination has taken place, and need not wait three days if he was examined on the first day. "Vicinity" must be interpreted fairly liberally. It would obviously extend to the place where the workman lived while employed, and therefore to any place between that and the premises on which he worked. In the case of a railway worker "the place in which he was employed" might be several hundred miles long, and the vicinity could be enlarged accordingly, if such an interpretation was shown to be reasonable. The nearest hospital would probably be regarded as

in the vicinity, if it was at any reasonable distance. If a workman leaves the vicinity otherwise than voluntarily, *e.g.*, if he is carried away in a helpless state, he incurs no penalty. But he cannot escape by pleading that the employer would not have examined him if he had stayed on.

139 THE second and third difficulties are dealt with in section 12 (2). The penalty for refusal or obstruction is the same as for leaving before the proper time; the right to compensation is suspended. In the case of refusal it is open to a workman to plead that he was prevented by sufficient cause from submitting himself: this does not apply to obstruction. It is a little difficult to suggest a case where refusal would be regarded as due to sufficient cause, for refusal implies something deliberate and is not the same thing as omission or failure. A possible example would be that of a woman refusing to be examined by a male doctor.

140. SUSPENSION of the right to compensation means, of course, that the workman cannot claim compensation until after the suspension has ended. He can end the suspension by returning and offering himself for examination, by consenting to the examination, or by ceasing to obstruct it as the case may be. But there is more involved in suspension

than this in most cases, for the workman will not be able to recover compensation for the period of suspension (see section 11(5)). Further the waiting time ceases to run during the period of suspension, so that if the workman goes away on the fourth day after the accident, the waiting period does not end until the seventh day after he returns. The effect of these provisions, in the case of temporary disablement, is that the workman loses for good any half-monthly payments for a period equivalent to the period of suspension, so that if he comes back well, he gets no compensation at all. But if he suffers permanent injury, suspension involves no more than the postponement of his claim. The question of the aggravation of injuries, which is obviously important in this connection, will be considered later (paragraphs 143 to 145). There is, of course a limit to this postponement: if the workman stays away six months, he will find his claim barred by limitation (see paragraph 153).

141. THERE is one case in which the workman cannot find a place of repentance; this is when death supervenes. In view of the very strong impulse which seriously injured men have to return to their own homes, power has been given to the Commissioner to award compensation if he thinks fit. This obviously involves the power to withhold

compensation, so that the dependants cannot insist on compensation on the ground that the dead man has ceased to refuse to be examined. The power is not intended to be used lightly, for it is obvious that if the employer is deprived of the right to medical examination, one of his leading safeguards is taken away. It is intended rather to cover the case where there is no doubt that the workman did receive injuries that were likely to result in his death. It will be for the dependants to prove the details of the accident and of the injuries, and it will be for them to show cause to the Commissioner for the use of his exceptional powers. And in their endeavour to prove their case, they will probably find that, if the deceased's act has deprived the employer of a right, it has deprived them of evidence that may be vital to their case. It should be noticed that if the Commissioner must award the full amount of compensation or none; he cannot award reduced compensation (see section 2 (1) (c)).

142. HITHERTO discussion has been confined to the first medical examination. But the workman who is in receipt of half-monthly payments may be required to appear for subsequent examinations. These may be necessary to prevent men drawing compensation after they have recovered or to deal with applications for review or for commutation. The same penalties attend refusal or obstruction of

subsequent medical examinations as attend such conduct in the case of the first examination.

143. SUB-SECTION (6) of section 12 deals with the question of medical attendance. It is of considerable importance to employers, for it offers them increased protection against the dangers of aggravation of injuries, provided that they are willing to supply medical attendance free. The medical attendance must be attendance by a qualified medical practitioner (see paragraph 136), and the employer will presumably offer, as a rule, the services of the doctor who conducts the examination, the offer being made then. A general standing offer by the employer, which is made to all workman on taking up employment, would probably be deemed insufficient, for a workman who did not take advantage of such an offer when he was injured could hardly be said to refuse the offer; he merely ignored it. The workman may accept the offer and avail himself of the treatment. If he refuses the offer, or refuses to carry out the instructions of the doctor, he runs the risk of losing compensation for any injuries that may result in consequence. If the injuries are aggravated, the workman is protected only if (a) he has been attended by a qualified medical practitioner of his own, or (b) he had reasonable grounds for refusing. Reasonable grounds would arise where the workman refused to undergo a very dangerous operation.

144. If the employer does not take advantage of section 12 (6) he is liable for the natural consequences of the accident, even though the workman could have prevented some of these by taking certain precautions. The workman is under no obligation to engage a qualified medical man, or to exercise particular care, and if his failure in this respect leads to aggravation of the injuries, he can still claim compensation for all the injuries he sustains. It is only if free medical attendance has been offered, and refused without proper cause that the compensation is limited to such injuries as would have resulted if the workman had received proper medical treatment.

145. BUT there will be some types of aggravation in which the employer will be protected by section 3 (4), which states that compensation is not to be paid in respect of any disease (except an occupational disease) unless the disease is *solely and directly attributable* to a specific injury by accident. Now if a workman gets a disease like blood-poisoning or tetanus by applying dirt to a wound, the disease in this case is not solely attributable to the injury by accident; it is due to the wrong treatment he gave the wound. Consequently, the employer will not be liable for the consequences of the disease, even though he has not offered medical treatment. But where the disease is one that was likely to have arisen directly

from the wound, the employer may find himself required to show that some other cause intervened to produce the disease later, and this will not be easy. The best precaution in every case is the offer of medical attendance, for the refusal of such an offer gives the employer some protection, while its acceptance would be the surest protection for both parties.

146. As soon as the employer is satisfied that the claim for compensation is a valid one, he should calculate the amount due. If the accident has proved fatal, he should hand the sum over to the Commissioner. In other cases, he should offer the compensation he is prepared to pay to the workman. If the workman contests the accuracy of the sum, and no agreement can be reached, the employer can deposit the compensation with the Commissioner under section 8 (2). If the workman agrees to the compensation offered, the employer may pay the money, but he should be careful to send the Commissioner a memorandum of the agreement. See paragraphs 21 and 22 regarding the duty of registering agreements and the penalties involved in the event of failure to register.

147. THE procedure for registration is governed by section 28 (1), which is based on section 9 of Schedule II of the British Act. Agreements must be registered :—

- (a) if the compensation takes the form of a lump sum, or
- (b) if the person who is to get the money is a person under a legal disability or a dependant.*

That is, the employer is obliged to register in such cases, and the workman can apply for registration if he so desires. In either case, the first step is the presentation of a memorandum of the agreement. This is not the same thing as a written agreement. It is merely a statement in writing of the terms on which agreement has been reached. The agreement may have been oral: in that case the party seeking to record the memorandum should record the details and present the memorandum. It is not necessary for him to obtain the signature of the other party to the agreement, though it is obviously useful to do so. The memorandum need not be presented personally; it can apparently be sent by post if that is more convenient.

THE Commissioner, on receiving the memorandum, gives notice to the parties concerned. If the memorandum is presented personally by

*The reference to dependants in the sub-section and in proviso (d) seems unnecessary. An employer should not have occasion to enter into agreement with a dependant.

either party, that party will presumably receive notice at once, as soon as the memorandum is filed, and notice will then be issued to the other party, if absent. The most convenient procedure for everyone concerned would be for the employer and the workman (or their representatives) to appear together with the memorandum; the whole affair can then be finally settled. The notice will be a notice to the effect that, in the absence of objections, the memorandum will be recorded after the lapse of not less than seven days, unless, of course, the Commissioner sees any reasons for declining, on his own initiative to record the agreement.

149. THE Commissioner is responsible for seeing that the compensation mentioned in the agreement is adequate. That is, he must satisfy himself that it corresponds with the compensation that would be due under the Act. He will presumably not interfere where there is only a trivial difference between the result of his own calculation and the amount entered in the memorandum. But if the difference is appreciable, it is his duty to refuse to record the agreement: he can then go on to order the payment of the proper sum. Before passing an order enhancing the sum, he would have to allow the employer an opportunity of showing that the money was not due. In order to enable the Commissioner to judge of the

adequacy of the sum specified, the memorandum must contain details of the results of the injury, and of the workman's wages.

150. If the workman applies to register an agreement the employer can plead that the workman has returned to work and is earning the same wages as before the accident. The Commissioner can, if he finds this fact proved, refuse to record the memorandum, or he can vary its terms. But he could not use his powers under this proviso [proviso (b)] to deprive the workman of compensation due under the Act merely because he was earning the same wages as before. Thus, if a workman lost a leg, and then returned to work on the same wages, he could still claim the compensation due for the loss of a leg. A workman who, after suffering a spinal injury, returned to work on the same wages might be refused compensation, but this would have to be on a finding that he had suffered no loss of earning capacity. The employer cannot apparently invoke this objection where the workman has returned to a wage smaller than that which he got before the accident, but if he is making half-monthly payments, he can have these reduced by application under section 6. (See paragraphs 114 and 160.)

151. SECTION 28 (2) contains a special provision preventing persons from using the provisions of the Indian Contract Act, 1872, or any other law, to

render duly registered agreements invalid. This is designed especially to meet the case of workman under 18. But for this provision, agreements with such persons might be declared invalid under section 11 of the Contract Act (IX of 1872). That section is designed to protect persons who may not be capable of protecting their own interests fully from bargaining away their rights. Here such persons are placed under the protection of the Commissioner, who is responsible in all cases for seeing that the workman is not defrauded, and who will naturally exercise special care where young persons are concerned. Section 32 (f) clearly contemplates all persons who are not minors (*i.e.*, who are not under 15) conducting proceedings on their own behalf. The last few words of section 19 (2), read with section 31, make it clear that application for the enforcement of an agreement must be made to the Commissioner, and that an agreement can neither be set aside nor enforced by a Civil Court.

152. IF the employer refuses to pay any compensation, or is unwilling to pay the full amount of the compensation claimed, the workman must proceed under section 22. This section governs all applications to the Commissioner for the settlement of disputes. An application cannot be filed under this section until an attempt has been made to reach agreement out of court, and every application

must contain a statement of the points on which agreement has been reached, and the points on which the parties cannot agree. (Section 22 (2) (d).) In the case of a claim for compensation, if the employer refuses to pay or declines to reply to the workman's requests, the workman's duty of endeavouring to settle the claim by agreement is discharged and he can go to the Commissioner. An illiterate workman or a workman who for any other adequate reason is unable to furnish a written application, can have his application prepared under the direction of the Commissioner. It is, of course open to the workman to have his application prepared by a legal practitioner or by any private person.

153. THE period for the limitation of a claim is fixed by section 10 (1) at six months from the date of death in fatal cases and six months from the date of the accident in other cases. This subsection is based on section 2 of the British Act, but differs from it in one important particular. That Act provides that proceedings are not maintainable unless the claim has been *made* within six months: the Indian Act speaks of the claim being *instituted*. In England, a claim made within six months to the employer, orally or in writing, is sufficient to render proceedings maintainable later. In India the claim must be formally instituted before the Commissioner within the period prescribed.

At the same time, there is a difference between "proceedings for the recovery of compensation" and "the claim for compensation". The latter refers to the original claim; the former may be regarded as including subsequent claims arising out of the same accident. In the case of masters and seamen being killed, the period of limitation commences to run from the date of the receipt of the news of death by the claimant, and if the ship has been lost with all hands, a period of eighteen months is allowed from the date when the ship was, or is deemed to have been, lost.* (Section 15 (2).)

154. THE Commissioner is empowered to admit and decide a claim although the claim has not been instituted within the proper time, provided that he is satisfied that the omission to file in time is due to sufficient cause. Thus a workman might continue to work despite a minor injury with the result that the injury got worse and resulted in disablement some months after the accident. Or a workman might be led to delay filing an application by promises made to him by the employer. Again, the dependants might not learn of the death of a workman for some months after

* Cf. section 174 (2) of the British Merchant Shipping Act, 1894, by which a ship which has not been heard of for 12 months, in certain proceedings "shall . . . be deemed to have been lost with all hands on board, either immediately after the time she was last heard of, or at such later time as the court hearing the cause may think probable."

it occurred. It is to meet cases such as these that the special powers conferred on the Commissioner should be useful.

155. PROCEDURE in proceedings before the Commissioner is to be regulated by rules framed under section 32 (2) (e). But in certain particulars, specific instructions are contained in the Act itself. By section 24 either party can be represented by a legal practitioner or by any other person authorised in writing. Thus the employer could be represented by an official of the insurance company with which he was insured, and the workman could be represented by a trade union official. It may be remarked in passing that the Act offers big opportunities for useful constructive work on the part of trade unions. Provision for the representation of minors (*i.e.*, persons under 15) and of parties unable to appear is left to rules under section 32 (2) (f).

156. UNDER section 20 (2) the Commissioner may call to his assistance persons possessing special knowledge of any matter relevant to the dispute. This will enable him to obtain expert advice and guidance from factory inspectors, persons having special knowledge of the trade or business concerned, shipping or mining experts, medical men, etc., throughout the hearing without having to examine

such persons as witnesses. The persons so called will be virtually in the position of assessors on the points with which they are concerned. Their capacity is purely advisory.

157. SECTION 23 empowers the Commissioner to take evidence on oath, to summon witnesses and to compel the production of documents and material objects. Section 25 deals with the manner of recording evidence, which is similar in some respects to that prescribed for Magistrates in summons-cases. A verbatim record of the evidence of every medical witness has to be kept; for other witnesses a memorandum is sufficient. A special rule of evidence relating to cases involving masters and seamen will be found in section 15 (3). This is similar to the rule contained in section 7 (1) (c) of the British Act, but follows the wording of section 283 of the Indian Merchant Shipping (Consolidation) Act, 1923, in place of the corresponding British provisions.*

158. SECTION 26 deals with the question of the costs of proceedings before Commissioner. It follows section 7 of Schedule II of the British Act. The Commissioner can apportion the costs as he thinks fit. Normally costs should follow the result of the case; the costs of both parties should

* On the value of this provision see Report of Departmental Committee (U. K.), 1920, paragraph 51.

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be paid by the party against whom decision is given, unless there are special reasons for ordering otherwise. The actual scale of costs has to be prescribed for each province by the Local Government concerned under section 33 (a).

CHAPTER VI.

SUBSEQUENT PROCEEDINGS.

159. It will not always be possible to dispose of a case finally when the workman makes his original claim. Provision is made in section 6 for the review of certain cases. The word "review" implies a second examination of the case, but in order to obtain review it is not necessary to prove that the claim has already been before the Commissioner. A decision reached by the employer and the workman in agreement is also subject to review. What is implied is that there has been a settlement of some kind, and that fresh facts have since justified a re-examination of the claim. The most frequent cause that should bring about the need for review will be a change in the condition of the workman and it is therefore prescribed that review can be had at any time if a qualified medical practitioner certifies that there has been such a change. If no such certificate is forthcoming, review can only be obtained subject to rules to be framed under section 32 (2) (a). Review can be made on the application of either party. It will be noticed, however, that the section only applies to cases where half-monthly

payments are payable, *i.e.*, to cases which are, or which have been treated as cases of temporary disablement.

160. TYPICAL cases likely to lead to review include the following :—

(i) a workman's disablement, which was regarded as temporary, proves to be permanent. This case is expressly mentioned in section 6 (2). Compensation has then to be awarded on the scale for permanent disablement, less any compensation already given for the period during which the disablement was regarded as temporary.

(ii) a workman returns to work, and earns some wages. The proviso to section 4 (1) gives the employer a right to a reduction in the amount of the half-monthly payments; if the workman has returned to work on full wages, the half-monthly payments can be ended.

(iii) a workman who was earning part wages takes a turn for the worse and has to stop work. This is the reverse case to the one just quoted. The workman can have the half-monthly payments increased.

(iv) a workman reaches 15 years of age, and the employer refuses to increase the payments. He can apply in review for his right under section 4 (1) D(ii).

(v) an employer starts to pay compensation and then stops. The workman can apply in review to have the payments "continued". (See section 6 (2).)

161. PROCEEDINGS in review are not subject to the rule contained in section 10 (1) regarding the limitation of claims. They are essentially different proceedings from the "proceedings for the recovery of compensation" contemplated by that sub-section. The proceedings referred to there are proceedings in a claim for compensation. An application for review is not a claim for compensation: it is an application made after the claim has been allowed by the Commissioner or by the employer. Further the proceedings referred to in section 10 (1) are obviously proceedings instituted by the workman, whereas either party can apply for review. In England the procedure is similar in this respect; it is governed by section 16 of Schedule II of the British Act, which is framed on similar lines. Before leaving the subject of review, it may be pointed out that section 32 (2) (h) contemplates the framing of rules to enable the Commissioner to pass interim orders suspending half-monthly payments, in whole or in part, during the hearing of review applications.

162. THERE are other cases where a change has occurred in the condition of the workman which cannot be brought under the review section.

It will be convenient to deal with these here, and to indicate the course to be followed by the parties affected. One is the case where a workman has received compensation for permanent disablement of one type, and subsequently sustains permanent disablement of a more severe kind as a result of the same accident, *e.g.*, a workman has a finger cut off by a machine, receives compensation for this, and subsequently has to have his hand amputated. In such a case the workman should file a fresh application under section 22 (1). The compensation already paid will, of course, be deducted under the proviso to section 4(1), unless the employer omitted to register an agreement to pay the earlier compensation. Another case is that of a workman dying as a result of the accident while he is in receipt of half-monthly payments for temporary disablement. The latter part of section 6 (2) indicates that it is not intended that such a case should be the subject of a review application, for although permanent disablement is there mentioned, no mention is made of death. The dependants of the workman should file a fresh application under section 22 (1), as the death of the workman creates a fresh right to compensation. It should be noticed in this connection that under section 10 (1) a fresh period of limitation starts from the date of the death, so that, although a long period may have elapsed between the accident

and the death, the dependants are in no way prejudiced. A third case is that of permanent disablement ending in death. Here again, the workman's dependants can file a fresh application if extra compensation is claimable.

163. It will not always be possible for the dependants to obtain further compensation in such a case. In some cases the compensation paid for permanent disablement will exceed the sum that could have been claimed on account of the death of the workman. For example, a man on Rs. 25 a month who is permanently and totally disabled gets Rs. 1,050; but if he is killed, his dependants get only Rs. 750. In the case of minors, even larger differences are possible. But if the money has been paid for permanent disablement, and if the workman dies, the employer will not be able to recover anything. The Bill, as originally introduced, enabled him to do so, but the provision for this was deleted in the Legislative Assembly. Where the results of an accident are doubtful, *e.g.*, in the case of a man in a very critical condition, the Commissioner will presumably feel justified in postponing his decision for a short period, in order to enable himself to come to an accurate finding as to the results.

164. SECTION 7, which relates to the commutation or redemption of half-monthly payments is designed to meet a different type of case.

Temporary disablement creates a right to compensation in the form of half-monthly payments. These payments may continue for five years, if the disablement lasts so long. But the continuance of half-monthly payments for a long period will frequently be inconvenient to the parties. When the workman is disabled for some time, he will naturally wish to return to his home. This may be at some distance from his place of employment; it is frequently in another province. In such cases the despatch and receipt of small payments twice a month may be far from convenient. The parties are therefore allowed to commute the remaining payments to a lump sum at any time. The terms should be entered in a memorandum of agreement, which should be presented to the Commissioner for registration. If the sum entered is adequate, the memorandum will be recorded and the amount can be paid. The Commissioner is responsible for seeing that the redemption sum is adequate; see section 28 (1), proviso (d). If he considers the sum inadequate and the payments have not gone on for six months, he should simply refuse to register, unless the employer agrees to pay a larger sum. If the payments have continued for six months, and the workman wishes to have them commuted for a larger sum, he could order their commutation for such sum as he regarded as adequate.

165. FOR, in addition to allowing redemption by agreement at any time, section 7 allows either party to apply for redemption after the half-monthly payments have continued for six months, and the Commissioner can then order redemption for any sum he considers proper. In fixing the amount, and in determining whether the amount specified in an agreement is adequate, the Commissioner must obviously be guided by an estimate of the probable duration of the disablement. The redemption sum need not, of course, be equivalent to the sum of the half-monthly payments for the estimated remaining period of disablement; a lump sum of Rs. 240 down is more costly to the employer, and more valuable to the workman than thirty half-monthly payments of Rs. 8 each. It is perhaps worth mentioning the fact that English experience has shown that the payment of a lump sum has a remarkable effect in promoting speedy recovery. The dishonest workman has no motive for malingering, when his claim is paid up, and the honest workman has an increased "will to get well" when he realises that he will get no more money for the duration of his illness.* On the other hand, lump sums are apt to be spent uneconomically.

* See Report of Departmental Committee (U. K.), 1920, paragraph 83.

166. It is apparently within the discretion of the Commissioner to reject an application for commutation of half-monthly payments, even when the six months' period has elapsed, and when the workman is still disabled. A reference to section 30 (1) (b) will show that an appeal lies against an order of the Commissioner refusing to allow redemption of a half-monthly payment; if he has not the discretion suggested, this clause becomes meaningless. For if the workman is no longer disabled, he has no right to half-monthly payments, so that section 7 does not apply; if the six months have not elapsed, no application can be made to the Commissioner under section 7. And an appeal against an order of the Commissioner refusing to record an agreement to commute because the sum was inadequate comes under section 30 (1) (c) and not section 30 (1) (b). If, as has been suggested, the Commissioner can require the continuance of half-monthly payments after the six months have elapsed, he might exercise this right by postponing commutation for a time, where there was unusual difficulty in estimating how long the disablement was likely to last.

167. WHEN the right to receive half-monthly payments has been redeemed, it will no longer be possible for either party to apply for review, for no half-monthly payment will be then payable. But

there is nothing to prevent the workman or his dependants from filing a fresh claim under section 22 (1) if a new right has been created, *e.g.*, if a workman who has received a lump sum in redemption of half-monthly payments for temporary disablement dies, the dependants will not be prevented from claiming compensation for his death, if that arose from the accident. The lump sum is not given in redemption of all claims that can be made; it merely redeems all half-monthly payments that might otherwise be due.

168. NORMALLY a case must be disposed of by the Commissioner appointed for the area within which the accident took place. In the case of masters and seamen, application should be made to the Commissioner for the area within which the owner or agent of the ship carries on his business. Cases may arise, however, where it would suit the convenience of the parties to have the proceedings transferred to another Commissioner. Provision is accordingly made for the transfer of cases in section 21, which can be supplemented by rules framed under section 32 (2) (d). Transfer may be of two kinds—transfer for report and transfer for final disposal.

169. THE Commissioner can transfer for report in any case, whether the parties desire such a transfer or not. In a transfer for report, all that is

done is to obtain from the second Commissioner a report on facts which he may be in a better position to ascertain than the first Commissioner. For example, if a workman is said to be lying critically ill within the jurisdiction of the second Commissioner, the latter may be in a better position to determine the condition of the workman than the Commissioner deciding the case. The second Commissioner will then inquire into the questions referred to him, and send back the case with his findings on the different points. These findings of fact must be accepted by the Commissioner who transferred the case.

170. TRANSFER for final disposal can ordinarily be made only if both parties agree. If either party objects to the transfer, the consent of the Local Government is required before the case can be transferred to another Commissioner in the same province; a transfer outside the province requires the sanction of the Government of India. The only exception to this rule is the case of the actual payment to a workman of money due to him or the distribution among the dependants of a lump sum, i.e., after a fatal accident. Once the compensation has been adjudged to be due, the employer is not interested in the actual distribution, so that the only parties concerned in such a proceeding are those who are to receive the compensation.

For example, if a Madrasi who has gone to Burma to work is killed there, it may be much more convenient for the distribution to be determined in Madras, where the dependants may be living.

171. REFERENCE has already been made to the possibility of an appeal against the decision of the Commissioner. The provisions governing appeals are contained in section 30. The appeal lies to the High Court. The expression "High Court" must here be taken to mean "the highest Civil Court of appeal in the part of British India in which the Act ...operates". (Section 3 (24) of the General Clauses Act (X of 1897).) The orders against which an appeal is possible are specified in clauses (a) to (e) of section 30 (1). The general principle underlying these clauses is that questions involving the payment of lump sums may justify appeals, while those concerning half-monthly payments, i.e., cases involving only temporary disablement, do not.

172. BUT the mere fact that an order of the Commissioner is one of the orders specified in clauses (a) to (e) does not necessarily confer a right to appeal. There are two conditions that must first be satisfied. One is that the appeal should be on a question of law. As in England, no appeal lies on a question of fact. In most cases there should not be much difficulty in distinguishing between questions

of law and of fact. Questions of fact are questions, generally speaking, that can be settled independently of the necessity of construing provisions of the Act or of any existing law. The Commissioner, in recording his decision, will doubtless set down separately, as far as possible, the findings on points of law and on points of fact. But if an appeal is filed the decision as to whether any question is one of law or of fact will rest with the High Court, and will not depend on the view taken by the Commissioner. For an appeal to lie, there must be a *substantial* question of law involved, *i.e.*, not a trivial technicality.

173. THE second condition is that the amount in dispute in the appeal should be not less than Rs. 300. That is, no appeal will be admitted unless, if completely successful, it would involve the transfer of at least Rs. 300. An exception is made in the case of the refusal of the Commissioner to allow redemption of half-monthly payments, for in this case it is not usually possible for the appellant to state the amount involved. In other cases, there should be no difficulty. It is, of course, open to the High Court to vary the decision of the Commissioner in such a way that less than Rs. 300 is transferred, but the sum at issue in the appeal must exceed the limit named. It will not be possible for an applicant,

by the entry of a fictitiously large sum, to claim an appeal in every case. He will ordinarily be limited to the claim he originally made before the Commissioner.

174. No appeal can be made if the Commissioner's order merely gives effect to an agreement between the parties, or where the parties agree beforehand to abide by the Commissioner's decision. The latter method offers a simple and easy way of eliminating unnecessary litigation. It makes the Commissioner a final arbitrator on all the points at issue. The Commissioner is further enabled by section 27 to reduce the number of possible appeals. Where a difficult question of law arises which would ultimately be the subject of an appeal, he can obtain a ruling from the High Court before giving his decision.

175. THE period of limitation for an appeal is fixed by section 30 (2) at sixty days. Under section 30 (3) this is subject to the provision contained in section 5 of the Limitation Act (IX of 1908) which reads :—

Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable by any enactment or rule for the time being in force may be admitted

after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.:—The fact that the appellant or applicant was misled by any order, practice, or judgment of the High Court in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

176. THE provisions of section 9 confer a certain amount of protection on compensation which has been adjudged due to workmen. They prevent the assignment and attachment of compensation, and should be of value principally in preventing the workman from selling his right to half-monthly payments to a money-lender, and in discouraging money-lenders from lending money on the security of compensation. The section does not apply to money that has actually been given to the workman; it is impossible to distinguish then between money given in compensation and money which the workman may have acquired in other ways.

177. SECTION 31 provides for the recovery of compensation after that compensation has been found to be due. It applies not only to compensation

due under the order of a Commissioner, but also to compensation due under agreements. Thus a workman who had obtained an agreement to pay compensation from his employer could apply to the Commissioner to use his powers under this section to secure the enforcement of the agreement. See also section 19 (2). Section 5 of the Revenue Recovery Act (I of 1890), which is referred to in section 31 of this Act, reads as follows :—

Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act as if the sum were payable to himself.

“Collector” here means the chief officer in charge of the land revenue administration of a district.

178. A WORD may be said in conclusion regarding the rule-making powers detailed in Chapter IV of the Act. Reference has already been made to

some of these powers. The list of subjects contained in sections 32 and 33 is a fairly long one, but those who have gone through the detailed discussion of the Act will realise that the scope of the rules is fairly restricted, as nearly every question of importance is governed by specific provisions of the Act. Perhaps the most important subjects left to rules are the regulation of the procedure to be followed by Commissioners (Section 32 (2) (c)), and the regulation of the scale of costs and fees, which has to be determined by the Local Governments under section 33 (a) and (b). All rules must be published first in draft and at least three months must elapse before they are confirmed. This provision, and the similar provisions contained in sections 2 (3) and 3 (3), are designed to allow time for criticism of the proposals made.

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AN
ACT
TO

Provide for the payment by certain classes of employers to their workmen of compensation for injury by accident.

WHEREAS it is expedient to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent
and commencement.

1. (1) This Act may be called the Workmen's Compensation Act, 1923.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.*

(3) It shall come into force on the first day of July, 1924.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—
Definitions.

(a) "adult" and "minor" mean respectively a person who is not and a person who is under the age of fifteen years;

* NOTE.—The Act has been extended to Berar by Government of India (Foreign and Political Department) Notification No. 787—1429-I, dated 16th May 1923.

- (b) "Commissioner" means a Commissioner for Workmen's Compensation appointed under section 20 ;
- (c) "compensation " means compensation as provided for by this Act ;
- (d) "dependant" means any of the following relatives of a deceased workman, namely, a wife, husband, parent, minor son, unmarried daughter, married daughter who is a minor, minor brother or unmarried sister, and includes the minor children of a deceased son of the workman and, where no parent of the workman is alive, a paternal grandparent ;
- (e) "employer " includes anybody of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him ;

(f) "managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer ;

(g) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time of the accident resulting in the disablement, and, where the disablement is of a permanent nature, such disablement as reduces his earning capacity in every employment which he was capable of undertaking at that time ; provided that every injury specified in Schedule I shall be deemed to result in permanent partial disablement ;

(h) "prescribed" means prescribed by rules made under this Act ;

(i) "qualified medical practitioner" means any person registered under the Medical Act, 1858, or any Act amending

the same, or under any Act of any Legislature in British India providing for the maintenance of a register of medical practitioners, or, in any area where no such last-mentioned Act is in force, any person declared by the Local Government, by notification in the local official Gazette, to be a qualified medical practitioner for the purposes of this Act ;

- (j) "registered ship" means any sea-going ship registered under the Bombay Coasting Vessels Act, 1838, or the Indian Registration of Ships Act, 1841, ^{XIX} ~~X~~ of or the Indian Registration of Ships Act (1841) Amendment Act, 1850, or ^{XI} ~~XI~~ of any home-trade ship so registered of a registered tonnage of not less than three hundred tons, or any inland steam-vessel as defined in section 2 of the Indian Steam Vessels Act, 1917, ^I of of a registered tonnage of not less than one hundred tons ;
- (k) "seaman" means any person forming part of the crew of any registered ship, but does not include the master of any such ship ;

- (l) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement: provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from any combination of injuries specified in Schedule I where the aggregate percentage of the loss of earning capacity, as specified in that Schedule against those injuries, amounts to one hundred per cent ;
- (m) "wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to cover any special expenses entailed on him by the nature of his employment ;

(n) "workman" means any person (other than 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) who—

(i) a railway servant as defined in section 3 of the Indian Railways Act, 1890, not permanently employed in any administrative, district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II, or

(ii) employed, either by way of manual labour or on monthly wages not exceeding three hundred rupees, in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing ; but does not include any person working in the capacity of a member of His Majesty's naval, military or air forces or of the Royal Indian Marine Service ; and any reference to a workman who has been injured shall,

where the workman is dead, include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any department of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The Governor-General in Council after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may, by a like notification, direct that the provisions of this Act shall apply in the case of any person (other than 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) who is employed by way of manual labour or on monthly wages not exceeding three hundred rupees in any occupation declared by such notification to be a hazardous occupation, or that the said provisions shall apply in the case of any specified class of such persons or in the case of any such person or class to whom any specified injury is caused; and any person in whose case the said provisions are so made applicable shall be deemed to be a workman within the meaning of this Act.

CHAPTER II.

WORKMEN'S COMPENSATION.

3. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter :

Employer's liability for compensation.

Provided that the employer shall not be so liable—

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding ten days ;
- (b) in respect of any injury to a workman resulting from an accident which is directly attributable to—
 - (i) the workman having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

- (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen; or
- (c) except in the case of death or permanent total disablement, in respect of any workman employed in the construction, repair or demolition of a building or bridge.

(2) If a workman employed in any employment involving the handling of wool, hair, bristles, hides or skins contracts the disease of anthrax, or if a workman whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

Explanation.—For the purposes of this subsection a period of service shall be deemed to be

continuous which has not included a period of service under any other employer.

(3) The Governor-General in Council, after giving, by notification in the Gazette of India, not less than three months' notice of his intention so to do, may by a like notification, add any description of employment to the employments specified in Schedule III, and shall specify in the case of the employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and the provisions of subsection (2) shall thereupon apply as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by subsections (2) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is solely and directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the

injury against the employer or any other person and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury—

(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner ; or

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

4. (1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely :—

Amount of compensation.	
-------------------------	--

A. Where death results from the injury—

(i) in the case of an adult, a sum equal to thirty months' wages or two thousand five hundred rupees, whichever is less, and

(ii) in the case of a minor, two hundred rupees ;

B. Where permanent total disablement results from the injury—

- (i) in the case of an adult, a sum equal to forty-two months' wages or three thousand five hundred rupees, whichever is less, and
- (ii) in the case of a minor, a sum equal to eighty-four months' wages or three thousand five hundred rupees, whichever is less ;

C. Where permanent partial disablement results from the injury—

- (i) in the case of an injury specified in Schedule I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury, and
- (ii) in the case of an injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury ;

Explanation.—Where more injuries than one are caused by the same accident, the amount of compensation payable under this head shall be aggregated but not so in any case as to exceed the amount which would have been payable if permanent total disablement had resulted from the injuries.

D. Where temporary disablement, whether total or partial, results from the injury, a half-monthly payment payable on the sixteenth day after the expiry of a waiting period of ten days from the date of the disablement, and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter,—

- (i) in the case of an adult, of fifteen rupees or a sum equal to one-fourth of his monthly wages, whichever is less, and
- (ii) in the case of a minor, of a sum equal to one-third or, after he has attained the age of fifteen years, to one-half of his monthly wages, but not exceeding in any case fifteen rupees :

Provided that there shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any

payment or allowance which the workman has received from the employer by way of compensation during the period of disablement prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be, and no half-monthly payment shall in any case exceed the amount, if any, by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages which he is earning after the accident.

(2) On the ceasing of the disablement before the date on which any half-monthly payment falls due, there shall be payable in respect of that half-month a sum proportionate to the duration of the disablement in that half-month.

5. For the purposes of section 4 the monthly wages of a workman shall be calculated as follows, namely :—

Method of calculating wages.

- (a) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period ;

- (b) in other cases, the monthly wages shall be thirty times the total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period:

Provided that the sum arrived at by a calculation under clause (a) or clause (b) shall be increased or decreased, as the case may be, to the amount specified in the second column of Schedule IV against the head specified in the first column thereof within the limits of which such sum is included.

Explanation.—A period of service shall, for the purposes of this section, be deemed to be continuous which has not been interrupted by a period of absence from work exceeding fourteen days.

6. (1) Any half-monthly payment payable under this Act, either under an
Review. agreement between the parties or under the order of a Commissioner, may be reviewed by the Commissioner on the application either of the employer or of the workman accompanied by the certificate of a qualified medical practitioner that there has been a change in the condition of the workman or, subject to rules made under this Act, on application made without such certificate.

(2) Any half-monthly payment may, on review under this section, subject to the provisions of this Act, be continued, increased, decreased or ended or, if the accident is found to have resulted in permanent disablement, be converted to the lump sum to which the workman is entitled less any amount which he has already received by way of half-monthly payments.

7. Any right to receive half-monthly payment may, by agreement between the parties or, if the parties cannot agree and the payments have been continued for not less than six months, on the application of either party to the Commissioner, be redeemed by the payment of a lump sum of such amount as may be agreed to by the parties or determined by the Commissioner, as the case may be.

8. (1) Compensation payable in respect of a workman whose injury has resulted in death shall be deposited with the Commissioner, and any sum so deposited shall be apportioned among the dependants of the deceased workman or any of them in such proportion as the Commissioner thinks fit, or may, in the discretion

of the Commissioner, be allotted to any one such dependant, and the sum so allotted to any dependant shall be paid to him or, if he is a person under any legal disability, be invested, applied or otherwise dealt with for his benefit during such disability, in such manner as the Commissioner thinks fit.

(2) Any other compensation payable under this Act may be deposited with the Commissioner and, when so deposited, shall be paid by the Commissioner to the person entitled thereto.

(3) The receipt of the Commissioner shall be a sufficient discharge in respect of any amount deposited with him under sub-section (1) or sub-section (2).

(4) On the deposit of any money under sub-section (1), the Commissioner may deduct therefrom the actual cost of the workman's funeral expenses, to an amount not exceeding fifty rupees and pay the same to the person by whom such expenses were incurred, and shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied, after any inquiry

which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.

(5) Where a half-monthly payment is payable under this Act to a person under any legal disability, the Commissioner may, of his own motion or on application made to him in this behalf, order that the half-monthly payment be paid during the disability to any dependant of the workman or to any other person whom he thinks best fitted to provide for the welfare of the workman.

(6) Where, on application made to him in this behalf or otherwise, the Commissioner is satisfied that, on account of neglect of children on the part of a parent or on account of the variation of the circumstances of any dependant or for any other sufficient cause, an order of the Commissioner as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependant is to be invested, applied or otherwise dealt with, ought to be varied, the Commissioner may make such orders for the variation of the former order as he thinks just in the circumstances of the case:

Provided that no such order prejudicial to any person shall be made unless such person has been given an opportunity of showing cause why the order should not be made, or shall be made in any case in which it would involve the repayment by a dependant of any sum already paid to him.

9. Save as provided by this Act, no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the workman by operation of law, nor shall any claim be set off against the same.

Compensation not to be assigned, attached or charged.

10. (1) No proceedings for the recovery of compensation shall be maintainable before a Commissioner unless notice of the accident has been given, in the manner hereinafter provided, as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been instituted within six months of the occurrence of the accident or, in case of death, within six months from the date of death:

Notice and claim.

Provided that, where the accident is the contracting of a disease in respect of which the provisions of sub-section (2) of section 3 are applicable, the accident shall be deemed to have occurred on the first of the days during which the workman was continuously absent from work in consequence of the disablement caused by the disease :

Provided, further, that the Commissioner may admit and decide any claim to compensation in any case notwithstanding that the notice has not been given, or the claim has not been instituted, in due time as provided in this sub-section, if he is satisfied that the failure so to give the notice or institute the claim, as the case may be, was due to sufficient cause.

(2) Every such notice shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date on which the accident happened, and shall be served on the employer or upon any one or several employers, or upon any person directly responsible to the employer for the management of any branch of the trade or business in which the injured workman was employed.

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

11. (1) Where a workman has given notice of an accident, he shall, if the Medical examination. employer, before the expiry of three days from the time at which service of the notice has been effected, offers to have him examined free of charge by a qualified medical practitioner, submit himself for such examination, and any workman who is in receipt of a half-monthly payment under this Act shall, if so required, submit himself for such examination from time to time :

Provided that a workman shall not be required to submit himself for examination by a medical practitioner otherwise than in accordance with rules made under this Act, or at more frequent intervals than may be prescribed.

(2) If a workman, on being required to do so by the employer under sub-section (1) or by the Commissioner at any time, refuses to submit himself for examination by a qualified medical practitioner or in any way obstructs the same, his right to compensation shall be suspended during the continuance of such refusal or obstruction unless, in the case of refusal, he was prevented by any sufficient cause from so submitting himself.

(3) If a workman, before the expiry of the period within which he is liable under sub-section (1) to be required to submit himself for medical examination

voluntarily leaves without having been so examined the vicinity of the place in which he was employed, his right to compensation shall be suspended until he returns and offers himself for such examination.

(4) Where a workman, whose right to compensation has been suspended under sub-section (3) or sub-section (3), dies without having submitted himself for medical examination as required by either of those sub-sections, the Commissioner may, if he thinks fit, direct the payment of compensation to the dependants of the deceased workman.

(5) Where under sub-section (2) or sub-section (3) a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension, and, if the period of suspension commences before the expiry of the waiting period referred to in clause D of sub-section (1) of section 4, the waiting period shall be increased by the period during which the suspension continues.

(6) Where an injured workman has refused to be attended by a qualified medical practitioner whose services have been offered to him by the employer free of charge or having accepted such offer has deliberately disregarded the instructions of such medical practitioner, then, if it is thereafter proved that the workman has not been regularly attended by a qualified medical practitioner and that such refusal,

failure or disregard was unreasonable in the circumstances of the case and that the injury has been aggravated thereby, the injury and resulting disablement shall be deemed to be of the same nature and duration as they might reasonably have been expected to be if the workman had been regularly attended by a qualified medical practitioner, and compensation, if any, shall be payable accordingly.

12. (1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

13. Where a workman has recovered compensation in respect of any injury caused under circumstances creating a legal liability of some person other than the person by whom the compensation was paid to pay damages in respect thereof, the person by whom the compensation was paid and any person who has been called on to pay an indemnity under section 12 shall be entitled to be indemnified by the person so liable to pay damages as aforesaid

Remedies of employer against stranger.

14. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Act to any workman, then in the event of the employer becoming insolvent or making a composition or scheme of arrangement with his creditors or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall notwithstanding anything in any law for the time being in force relating to insolvency or the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency proceedings or liquidation.

(3) Where in any case such as is referred to in sub-section (1) the contract of the employer with the insurers is void or voidable by reason of non-compliance on the part of the employer with

any terms or conditions of the contract (other than a stipulation for the payment of premia), the provisions of that sub-section shall apply as if the contract were not void or voidable, and the insurers shall be entitled to prove in the insolvency proceedings or liquidation for the amount paid to the workman :

Provided that the provisions of this sub-section shall not apply in any case in which the workman fails to give notice to the insurers of the happening of the accident and of any resulting disablement as soon as practicable after he becomes aware of the institution of the insolvency or liquidation proceedings.

(4) There shall be deemed to be included among the debts which under section 49 of the Presidency-towns Insolvency Act, 1909, or under section 61 of III of 1900. the Provincial Insolvency Act, 1920, or under section V of 1920. 230 of the Indian Companies Act, 1913, are in the VII of 1913. distribution of the property of an insolvent or in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount due in respect of any compensation the liability wherefor accrued before the date of the order of adjudication of the insolvent or the date of the commencement of the winding up, as the case may be, and those Acts shall have effect accordingly.

(5) Where the compensation is a half-monthly payment, the amount due in respect thereof shall, for the purposes of this section, be taken to be the amount of the lump sum for which the half-monthly payment could, if redeemable, be redeemed if application were made for that purpose under section 7, and a certificate of the Commissioner as to the amount of such sum shall be conclusive proof thereof.

(6) The provision of sub-section (4) shall apply in the case of any amount for which an insurer is entitled to prove under sub-section (3), but otherwise those provisions shall not apply where the insolvent or the company being wound up has entered into such a contract with insurers as is referred to in sub-section (1).

(7) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

15. This Act shall apply in the case of workmen who are masters of registered ships or seamen subject to the following modifications, namely:—

Special provisions
relating to masters and
seamen

(1) no notice of the accident and the claim for compensation may, except where the person injured

is the master of the ship, be served on the master of the ship as if he were the employer, but where the accident happened and the disablement commenced on board the ship, it shall not be necessary for any seaman to give any notice of the accident.

(2) In the case of the death of a master or seaman, the claim for compensation shall be made within six months after the news of the death has been received by the claimant or, where the ship has been or is deemed to have been lost with all hands, within eighteen months of the date on which the ship was, or is deemed to have been, so lost.

(3) Where an injured master or seaman is discharged or left behind in any part of His Majesty's dominions or in foreign country, any depositions taken by any Judge or Magistrate in that part or by any Consular Officer in the foreign country and transmitted by the person by whom they are taken to the Governor-General in Council or any Local Government shall, in any proceedings for enforcing the claim, be admissible in evidence—

(a) if the deposition is authenticated by the signature of the Judge, Magistrate or Consular Officer before whom it is made;

- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness ; and
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused ;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub-section (4) of that section.

(5) No monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in British India relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

16. The Governor-General in Council may, by notification in the Gazette of India, direct that every person employing workmen, or that any specified class of such persons, shall send at such time and in such form and to such authority, as may be specified in the notification, a correct return specifying the number of injuries in respect of which compensation has been paid by the employer during the previous year and the amount of such compensation, together with such other particulars as to the compensation as the Governor-General in Council may direct.

17. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

- (b) if the defendant or the person accused, as the case may be, had an opportunity by himself or his agent to cross-examine the witness ; and
- (c) if the deposition was made in the course of a criminal proceeding, on proof that the deposition was made in the presence of the person accused ;

and it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition and a certificate by such person that the defendant or the person accused had an opportunity of cross-examining the witness and that the deposition if made in a criminal proceeding was made in the presence of the person accused shall, unless the contrary is proved, be sufficient evidence that he had that opportunity and that it was so made.

(4) In the case of the death of a master or seaman leaving no dependants, the Commissioner shall, if the owner of the ship is under any law in force for the time being in British India relating to merchant shipping liable to pay the expenses of burial of the master or seaman, return to the employer the full amount of the compensation deposited under sub-section (1) of section 8 without making the deduction referred to in sub-section (4) of that section.

(5) No monthly payment shall be payable in respect of the period during which the owner of the ship is, under any law in force for the time being in British India relating to merchant shipping, liable to defray the expenses of maintenance of the injured master or seaman.

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17. Any contract or agreement whether made before or after the commencement of this Act, whereby a workman relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act.

18. Where any question arises as to the age of a person injured by accident arising out of and in the course of his employment in a factory, a certificate granted in respect of such person under section 7 or section 8 of 1911. of the Indian Factories Act, 1911, before the occurrence of the injury shall be conclusive proof of the age of such person.

CHAPTER III.

COMMISSIONERS.

9. (1) If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (including any question as to whether a person injured is or is not a workman) or as to the amount or duration of compensation including any question as to the nature or extent of disablement), the question shall, in default of agreement, be settled by the Commissioner.

(2) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner or to enforce any liability incurred under this Act.

20. (1) The Local Government may, by notification in the local official Gazette, appoint any person to be a Commissioner for Workmen's Compensation for such local area as may be specified in the notification.

(2) Any Commissioner may, for the purpose of deciding any matter referred to him for decision under this Act, choose one or more persons possessing special knowledge of any matter relevant to the matter under inquiry to assist him in holding the inquiry.

(3) Every Commissioner shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of

21. (1) Where any matter is under this Act to be done by or before a Commissioner, the same shall, subject to the provisions of this Act and to any rules made hereunder, be done by or before the Commissioner for the local area in which the accident took place which resulted in the injury:

Venue of proceedings
and transfer.

Provided that, where the workman is the master of a registered ship or a seaman, any such matter may be done by or before the Commissioner for the local area in which the owner or agent of the ship resides or carries on business.

(2) If a Commissioner is satisfied by any party to any proceedings under this Act pending before him that such matter can be more conveniently dealt with by any other Commissioner, whether in the same province or not, he may, subject to rules made under this Act, order such matter to be transferred to such other Commissioner either for report or for disposal and, if he does so, shall forthwith transmit to such other Commissioner all documents relevant for the decision of such matter and, where the matter is transferred for disposal, shall also transmit in the prescribed manner any money remaining in his hands or invested by him for the benefit of any party to the proceedings:

Provided that no matter other than a matter relating to the actual payment to a workman or the distribution among dependants of a lump sum shall be transferred for disposal under this sub-section to a Commissioner in the same province save with the previous sanction of the Local Government or to a Commissioner in another province save with the previous sanction of the Governor-General in Council, unless all the parties to the proceedings agree to the transfer.

(3) The Commissioner to whom any matter is so transferred shall, subject to rules made under this Act, inquire therein and, if the matter was transferred for report, return his report thereon or, if the matter

was transferred for disposal, continue the proceedings as if they had originally commenced before him.

(4) On receipt of a report from a Commissioner to whom any matter has been transferred for report under sub-section (2), the Commissioner by whom it was referred shall decide the matter referred in conformity with such report.

22. (1) No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement.

(2) Where any such question has arisen, the application may be made in such form and shall be accompanied by such fee, if any, as may be prescribed, and shall contain, in addition to any particulars which may be prescribed, the following particulars, namely:—

- (a) a concise statement of the circumstances in which the application is made and the relief or order which the applicant claims;
- (b) in the case of a claim for compensation against an employer, the date of service of notice of the accident on the employer and, if such notice has not been served or has not been served in due time, the reason for such omission;

(c) the names and addresses of the parties;
and

(d) a concise statement of the matters on
which agreement has and on those on
which agreement has not been come
to.

(3) If the applicant is illiterate or for any other
reason is unable to furnish the required information
in writing, the application shall, if the applicant so
desires, be prepared under the direction of the Com-
missioner.

1908. **23.** The Commissioner shall have all the powers of
a Civil Court under the Code of
Powers and proce- Civil Procedure, 1908, for the
dure of Commissioners. purpose of taking evidence on
oath (which such Commissioner is hereby empowered
to impose) and of enforcing the attendance of
witnesses and compelling the production of docu-
ments and material objects.

24. Any appearance, application or act required to
be made or done by any person
Appearance of parties. before or to a Commissioner
(other than an appearance of a party which is required
for the purpose of his examination as a witness) may
be made or done on behalf of such person by a legal
practitioner or other person authorised in writing by
such person.

25. The Commissioner shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds, and such memorandum shall be written and signed by the Commissioner with his own hand and shall form part of the record:

Method of recording evidence.

Provided that, if the Commissioner is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided, further, that the evidence of any medical witness shall be taken down as nearly as may be word for word.

26. All costs incidental to any proceedings before a Commissioner shall, subject to rules made under this Act, be in the discretion of the Commissioner.

Costs.

27. A Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court and, if he does so, shall decide the question in conformity with such decision.

Power to submit cases.

28. (1) Where the amount of any lump sum payable as compensation has been settled by agreement, whether by way of redemption of a half-monthly payment or otherwise, or where any compensation has been so settled as being payable to a person under a legal disability or to a dependant, a memorandum thereof shall be sent by the employer to the Commissioner, who shall, on being satisfied as to its genuineness, record the memorandum in a register in the prescribed manner :

Provided that—

- (a) no such memorandum shall be recorded before seven days after communication by the Commissioner of notice to the parties concerned ;
- (b) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation and the employer proves that the workman has, in fact, returned to work and is earning the same wages as he did before the accident and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Commissioner thinks just in the circumstances ;

(c) the Commissioner may at any time rectify the register ;

(d) where it appears to the Commissioner that an agreement as to the payment of a lump sum whether by way of redemption of a half-monthly payment or otherwise, or an agreement as to the amount of compensation payable to a person under any legal disability or to any dependant, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement or may make such order, including an order as to any sum already paid under the agreement, as he thinks just in the circumstances.

(2) An agreement for the payment of compensation which has been registered under sub-section (1) shall be enforceable under this Act notwithstanding anything contained in the Indian Contract Act, 1872, ^{IX of 18} or in any other law for the time being in force.

29. Where a memorandum of any agreement, the registration of which is required by section 28, is not sent to the Commissioner as required by that section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of this Act, and notwithstanding anything contained in the proviso to subsection (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

30. (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely :—

Appeals.

- (a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ;
- (b) an order refusing to allow redemption of a half-monthly payment ;
- (c) an order providing for the distribution of compensation among the dependants

of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties.

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the Indian Limitation Act, 1908, shall be applicable to appeals ^{1A} of 1 under this section.

31. The Commissioner may recover as an arrear of land-revenue any amount payable by any person under this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public officer within the meaning of section 5 of the Revenue Recovery Act, 1890.

CHAPTER IV.

RULES.

32. (1) The Governor-General in Council may make rules to carry out the purpose of this Act.
- Power of the Governor-General in Council to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) for prescribing the intervals at which and the conditions subject to which an application for review may be made under section 6 when not accompanied by a medical certificate;
- (b) for prescribing the intervals at which and the conditions subject to which a workman may be required to submit himself for medical examination under subsection (1) of section 11;

- (c) for prescribing the procedure to be followed by Commissioners in the disposal of cases under this Act and by the parties in such cases ;
- (d) for regulating the transfer of matters and cases from one Commissioner to another and the transfer of money in such cases ;
- (e) for prescribing the manner in which money in the hands of a Commissioner may be invested for the benefit of dependants of a deceased workman and for the transfer of money so invested from one Commissioner to another ;
- (f) for the representation in proceedings before Commissioners of parties who are minors or are unable to make an appearance ;
- (g) for prescribing the form and manner in which memoranda of agreements shall be presented and registered ;
- (h) for the withholding by Commissioners, whether in whole or in part, of half-monthly payments pending decision on applications for review of the same ; and
- (i) for any other matter which is not, in the opinion of the Governor-General in Council, a matter of merely local or provincial importance.

33. The Local Government may, subject to the control of the Governor-General in Council, make rules to provide for all or any of the following matters, namely :—

- (a) for regulating the scales of costs which may be allowed in proceedings under this Act ;
- (b) for prescribing and determining the amount of the fees payable in respect of any proceedings before a Commissioner under this Act ;
- (c) for the maintenance by Commissioners of registers and records of proceedings before them ; and
- (d) generally for carrying out the provisions of this Act in respect of any matter which is in the opinion of the Local Government, a matter of merely local importance in the province.

34. (1) The power to make rules conferred by sections 32 and 33 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules

proposed to be made under section 32 or section 33 will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Rules so made shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication, shall have effect as if enacted in this Act.

SCHEDULE I.

[See sections 2 (1) and 4.]

List of injuries deemed to result in permanent partial disablement.

Injury.	Percentage of loss of earning capacity.
Loss of right arm above or at the elbow ...	70
Loss of left arm above or at the elbow ...	60
Loss of right arm below the elbow ...	60
Loss of leg at or above the knee ...	60
Loss of left arm below the elbow ...	50
Loss of leg below the knee ...	50
Permanent total loss of hearing ...	50
Loss of one eye ...	30
Loss of thumb ...	25
Loss of all toes of one foot ...	20
Loss of one phalanx of thumb ...	10
Loss of index finger ...	10
Loss of great toe ...	10
Loss of any finger other than index finger ...	5

NOTE.—Complete and permanent loss of the use of any limb or member referred to in this Schedule shall be deemed to be the equivalent of the loss of that limb or member.

SCHEDULE II.

[See section 2 (1) (n).]

List of persons who, subject to the provisions of section 2 (1) (n), are included in the definition of workmen.

The following persons are workmen within the meaning of section 2 (1) (n) and subject to the provisions of that section, that is to say, any person who is—

- (i) employed in connection with the service of a tramway as defined in section 3 of the Indian Tramways Act, 1886; or
- (ii) employed within the meaning of clause (2) of section 2 of the Indian Factories Act, 1911, in any place which is a factory within the meaning of sub-clause (a) of clause (3) of that section; or
- (iii) employed within the meaning of clause (d) of section 3 of the Indian Mines Act, 1923, in any mine which is subject to the operation of that Act; or
- (iv) employed as the master of a registered ship or as a seaman; or
- (v) employed for the purpose of loading, unloading or coaling any ship at any pier, jetty, landing place, wharf, quay, dock,

warehouse or shed, on, in or at which steam, water or other mechanical power or electrical power is used ; or

(vi) employed in the construction, repair or demolition of—

(a) a building which is designed to be, is, or has been more than one storey in height above ground level, or

(b) a building which is used, has been used, or is designed to be used, for industrial or commercial purposes and is, has been or is designed to be, not less than twenty feet in height measured from ground level to apex of the roof, or

(c) a bridge which is, has been or is designed to be more than fifty feet in length ; or

(vii) employed in setting up, repairing, maintaining, or taking down any telegraph or telephone line or post or any overhead electric cable ; or

(viii) employed in the construction, inspection or upkeep of any underground sewer ; or

(ix) employed in the service of any fire brigade.

SCHEDULE III.

(See section 3.)

List of occupational diseases.

Occupational disease.	Employment.
Lead poisoning or its sequelæ.	Any process involving the use of lead or its preparations or compounds.
Phosphorus poisoning or its sequelæ.	Any process involving the use of phosphorus or its preparations or compounds.

SCHEDULE IV.

(See section 5.)

Table of assumed wages.

Limits.				Assumed wages.			
Where the sum arrived at by a calculation under clause (a) or clause (b) of section 5 is—							
	Rs.	A.	P.		Rs.	A.	P.
less than	9	0	0	...	8	0	0
not less than	9	0	0	but less than	11	0	0
"	11	0	0	ditto	13	0	0
"	13	0	0	ditto	17	8	0
"	17	8	0	ditto	22	8	0
"	22	8	0	ditto	27	8	0
"	27	8	0	ditto	32	8	0
"	32	8	0	ditto	37	8	0
"	37	8	0	ditto	42	8	0
"	42	8	0	ditto	50	0	0
"	50	0	0	ditto	60	0	0
"	60	0	0	ditto	70	0	0
"	70	0	0	ditto	80	0	0
"	80	0	0	...	...	83	5 4

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W. C. C. denotes Minton-Senhouse: Workmen's

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