FINAL REPORT

On

Laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily.

The Hon. Sir William Ralph Meredith
October 31, 1913

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By

The Hon. Sir William Ralph Meredith, C.J.O., Commissioner

TO HIS HONOUR SIR JOHN MORISON GIBSON, K.C.M.G., K.C., LL.D., LIEUTENANT-GOVERNOR OF THE PROVINCE OF ONTARIO.

MAY IT PLEASE YOUR HONOUR:

I have the honour to report that I have concluded the enquiries which I was by Your Honour's Commission bearing date the 30th day of June, 1910, appointed to make "as to the laws relating to the liability of employers to make compensation to their employees for injuries received in the course of their employment which are in force in other countries, and as to how far such laws are found to work satisfactorily," and on the first day of April, 1913, I submitted to Your Honour a draft bill embodying such changes in the law as in my opinion should be adopted in this Province, and I now proceed to state my reasons for recommending that the draft bill should be passed into law.

At the outset of the enquiry it was contended by those who spoke on behalf of the workingmen: (1) That the law of Ontario is entirely inadequate in the conditions under which industries are now carried on to provide just compensation for those employed in them who meet with injuries, or suffer from industrial diseases contracted in the course of their employment; and (2) that under a just law the risks arising from these causes should be regarded as risks of the industries and that compensation for them should be paid by the industries.

With these two propositions those representing the employers expressed their agreement, though it is fair to say that it was probably not intended to agree that compensation should be paid in respect of industrial diseases.

Agreeing as I did with the contention of the workingmen there remained only to be considered in what form and by what means the compensation should be provided.

For the purpose of reaching a conclusion as to this, and in obedience to the directions of the Commission, I made enquiry as to the laws in force in the principal European countries, in the United States of America and in the Provinces of Canada. I also visited Belgium, England, France, and Germany, and consulted those concerned in administering the laws of those four countries, and others qualified to judge as to whether they have been found to work satisfactorily. Much evidence has been taken bearing upon the general question, all of which appears in the appendix to my first interim report, dated the 27th day of March, 1912, and the appendix to this report.

Before referring to the different systems in operation it may be proper to say that most of these laws, and perhaps all of them except the German, have not been in force long enough to enable a conclusive opinion to be formed as to their merits or demerits.

There are two main types of compensation laws. By one of them the employer is individually liable for the payment of it, and that is the British system. By the other, which may be called the German system, the liability is not individual but collective, the industries being divided into groups, and the employers in the industries in each group being collectively liable for the payment of the compensation to the workmen employed in those industries -- practically a system of compulsory mutual insurance under the management of the State. The laws of other countries are of one or other of these types, or modified forms of them, and in most, if not all of them, in which the principle of individual liability obtains, employers are required to insure against it.

Those representing the workingmen at the beginning of the enquiry appeared to favour the adoption of the British system. Mr. F.W. Wegenast, who represented the Canadian Manufacturers Association, strongly urged the adoption of the German system, and his view was supported by most of the other employers who appeared or were represented before me, and later on in the enquiry the representatives of the workingmen fell in with Mr. Wegenast's views.

There were, however, differences of opinion as to details. The employers insisted that a part of the assessments to provide for the payment of the compensation should be paid by the employees, and this was vigorously opposed by the representatives of the workingmen. The employers desired that no compensation should be payable where the injury to the workman did not disable him from earning full wages for at least seven days, and to this the representatives of the workingmen objected. The employers also desired that, as the British act provides, an employee should not be entitled to compensation if his injury was due to his own serious and wilful misconduct, but the representatives of the workingmen objected to any such limitation to the right to compensation.

As stated in my first interim report, I had then come to no conclusion as to these matters, or as to what system of compensation I should recommend for adoption, nor had I reached a conclusion as to the industries to which the law

should be made applicable, nor as to certain other details which I enumerated in my report.

After the best consideration I was able to give to the important matters as to which I was commissioned by Your Honour to make recommendations, I came to the conclusion, to which I still adhere, that a compensation law framed on the main lines of the German law with the modifications I have embodied in my draft bill is better suited to the circumstances and conditions of this Province than the British compensation law, or the compensation law of any other country.

I have had the benefit of hearing the opinions of Mr. Miles M. Dawson, Mr. S.H. Wolfe, Mr. P. Tecumseh Sherman, and Mr. F.W. Wegenast, all of whom have given special attention to the subject of compensation laws and industrial accident insurance, as to the operation of those laws, and as to the best form of compensation law to be adopted under the conditions which obtain in this Province, and also of hearing the opinions of Mr. James Harrington Boyd, who had a large part in framing the compensation law passed by the Legislature of the State of Ohio, and of Mr. F.W. Hinsdale, the chief auditor of the Industrial Insurance Board of the State of Washington, as to the operation of the compensation laws of those States, and also upon the general question as to the best form of compensation law for this Province.

These gentlemen differed widely in their opinions as to the best form of compensation law, as will be seen from their testimony and arguments which appear in the appendices to my report, and from the memoranda submitted by Mr. Wolfe and Mr. Sherman, although they are practically unanimous as to the industries bearing the burden of the compensation, and, with the exception of Mr. Wegenast, they are all of opinion that this burden should be borne equally by the employer and employed.

Mr. Sherman is opposed to the system of collective liability, which he characterizes as unjust because it imposes upon the individual employer the obligation of sharing the burden of accidents in other establishments than his own and, as he assumes, notwithstanding that by the introduction of the best machinery and appliances and safeguarding against accident he has reduced the number of accidents in his establishment to a minimum, he is placed as respects his liability to pay compensation on the same footing as an employer whose machinery and appliances are defective and who takes little or no precaution to guard against accidents in his establishment.

If a uniform rate were payable by all the employers in a class or sub-class, regardless of these considerations, I agree that there would be the injustice which Mr. Sherman points out, but I have in the draft bill which I have submitted introduced provisions (sec. 71, s.s. 2 and 4) which, in my opinion, will provide against that happening.

The arguments presented by Mr. Dawson and Mr. Wegenast, and perhaps those of Mr. Wolfe, in favour of the collective system are, I think, unanswerable if, as I believe, the true aim of a compensation law is to provide for the injured

workman and his dependants and to prevent their becoming a charge upon their relatives or friends, or upon the community at large.

It is in my opinion essential that as far as is practicable there should be certainty that the injured workman and his dependants shall receive the compensation to which they are entitled, and it is also important that the small employer should not be ruined by having to pay compensation, it might be, for the death or permanent disability of his workmen caused by no fault of his. It is, I think, a serious objection to the British act that there is no security afforded to the workman and his dependants that the deferred payments of the compensation will be met, and that objection would be still more serious in a comparatively new country such as this, where many of the industries are small and conditions are much less stable than they are in the British Isles.

This objection could, of course, be met by making it obligatory upon the employer to insure his workmen against accident to the maximum amount to which they or their dependants would be entitled under the act, but if insurance is to be compulsory I see no reason why the cheapest form of it -- mutual insurance -- should not be prescribed.

I agree also with Mr. Dawson that the ultimate burden of paying the compensation under such a law as is proposed falls upon the community and that whatever the employer has to pay, whether directly by way of compensation, or if he insures against his liability by paying insurance premiums, forms part of the cost of that which he produces and is added to the selling price.

Mr. Sherman's view is that insurance should be made compulsory "only if and when reasonably necessary in order to assure to the injured workmen the payment of their compensation," and that "in no event should those concerns that are amply able to carry their own insurance be required to buy insurance or contribute to a State scheme, for that," he says, "would be pure economic waste."

I do not understand the latter argument or how there can be said to be economic waste if the "concerns" he mentions are not required to do more than contribute with other employers to the payment of compensation according to the hazard of their respective businesses. I could understand that there might be economic waste if it were incumbent on such an employer to insure with a joint stock company which would require him to pay a premium sufficient to provide for the cost of securing the business and a reasonable dividend to its shareholders as well as to indemnify against the risk undertaken.

There was much discussion as to the basis on which the assessments to provide the compensation should be made. The German law provides for assessing only for the amounts required to meet the payments of compensation which fall due during the year next preceding that in which the assessments are made, with an added percentage to provide a reserve fund to meet deficiencies in the accident fund in the event of an unusual catastrophe or a depression in trade, but no assessment is made beyond that to meet the deferred payments of compensation, i.e., the payments which are to become due in future years. This plan, popularly called the current cost plan, is that proposed by the Canadian

Manufacturers Association, and Mr. Dawson favours it as not only expedient because it does not involve making the heavy assessments which would have to be made at the outset if the capitalized value of the deferred payments had to be provided for by the assessments, but also as "not unfair to the employers in future years, or economically unsound."

On the other hand the current cost plan is vigorously denounced by Mr. Sherman, who contends that it is manifestly unfair to the employer of the future because it shifts upon his shoulders part of the burden of compensating for accidents which have happened before he became an employer, and that it results in low assessments in the early years of the operation of the law, and necessarily increases in the later years, until in a measurable period of time they become a burden too oppressive for the employer of the future to bear.

In support of his view Mr. Sherman referred to the rates in Germany, which he said, "now average about double what they were at the beginning," and he added that "it is calculated that they will not reach their stable maximum for some twenty years more. How much more they will then be no one knows, but the majority guess is they will then double."

Mr. Wolfe is equally emphatic in his condemnation of the current cost plan, and in addition to his oral testimony presented a table which appears on page 147 of the appendix to this report, and which he contended demonstrates the accuracy of his conclusions.

The views of Mr. Sherman and Mr. Wolfe were controverted by Mr. Wegenast, who contended that statistics prove that in some instances the stable maximum has already been reached and that there is nothing to justify the gloomy forebodings of Mr. Sherman as to the future.

Mr. Wegenast's contention is hardly supported by Mr. Dawson, whose opinion (page 452, appendix to first interim report) is that there will be an increasing rate "which is estimated to increase pretty rapidly for about ten years and then rather slowly and with increasing slowness for at least fifteen years longer, and if there is no improvement in the conditions relating to trade and industry, it will still very slowly increase for twenty-five years beyond that."

I am not convinced that the German plan affords an adequate safeguard against the dangers which Mr. Sherman anticipates, nor am I satisfied that it does not do so. I have, therefore, concluded that the act should not lay down any hard and fast rule as to the amount which shall be raised to provide a reserve fund and that it is better to leave that to be determined by the Board which is to have the collection and administration of the accident fund as experience and further investigations may dictate. I have therefore made provision in the draft bill to that end, by making it "the duty of the Board at all times to maintain the accident fund so that with the reserves it shall be sufficient to meet all the payments to be made out of the fund in respect of compensation as they become payable and so as not unduly or unfairly to burden the employers in any class in future years with payments which are to be made in those years in respect of accidents which have previously happened," (sec. 70), and by authorizing the Lieutenant-

Governor in Council if in his opinion the Board has not performed that duty to require the Board to make a supplementary assessment of such sum as in his opinion is necessary to be added to the fund, (sec. 90), and these provisions I deem essential to the safety and adequacy of the scheme of compensation for which the draft bill provides.

I may here point out that the act of the State of Washington upon which the draft bill submitted by the Canadian Manufacturers Association, to which I shall afterwards refer, is modeled, requires that for every case of injury resulting in death or permanent total disability there shall be set apart out of the accident fund the estimated present value of the monthly payments to which the workman or his dependants are entitled, the total in no case to exceed $4,000.

Mr. Sherman also takes strong grounds against the administration of the act being committed to a Board appointed by the State, his view being that such a Board will be influenced by partisan political considerations in practically all its doings. I have no such fear. Whatever else may be doubtful as to the workings of the act there is no doubt, I think, that the members of the Board appointed by the Crown will impartially and according to the best of their ability discharge the important duties which will devolve upon them in the event of the draft bill becoming law. Whatever may be the experience of other countries the experience of Canada does not justify the view which Mr. Sherman entertains. There are now two Provincial Commissions appointed by the Crown discharging very important duties -- the Ontario Railway and Municipal Board and the Hydro-Electric Power Commission -- and one appointed by the Governor-General also discharging very important duties -- the Railway Commission of Canada. Whatever criticisms there may have been of the action of these Boards, no one, as far as I have heard, has ever charged or even suggested that any member of them has been actuated or influenced by partisan political considerations in any action that has been taken by him and I know of no reason why the Board which is provided for by the draft bill may not be expected to be as free from political partisanship as either of the Boards I have mentioned.

I proceed now to state the general plan upon which the bill has been drafted. The bill is divided into Parts. In Part I the liability of employers to contribute to the accident fund or to pay the compensation individually is dealt with.

The bill does not provide for making all employers liable to pay compensation, but only those in the industries enumerated in schedules 1 and 2, and provision is made for industries enumerated in schedule 2 being added to schedule 1 whenever the Board deems it expedient to add them. Schedule 1 includes all the industries which it is proposed by the draft bill of the Canadian Manufacturers Association to bring within the scope of the act, except those enumerated in schedule 2.

The inclusion of railways in schedule 1 was opposed by the three principal steam railway companies and by some of the other railway companies, and I saw no reason why their wishes should not be met if by meeting them the act would

not be rendered less beneficial to the employees and no injustice would be done to the employers in the industries included in the schedule. The draft bill has been framed so as, in my opinion, to work no injustice to anyone and not less beneficially to the employees owing to railways being excluded from the schedule.

The only difference between the operation of the act as to industries in schedule 1 and those in schedule 2 is that employers in the former contribute to the accident fund and in that way pay collectively the compensation, while employers in the latter do not contribute to the accident fund but are liable individually for the compensation payable to their employees. In other respects the operation of the act is the same in both cases. The Board determines the amount of the compensation in both cases and its orders when filed in a County or District Court become orders of the court and may be enforced as judgments of it.

The reasons for adopting the collective system have practically no application to railways, especially when, as has already been done in Ontario and will, I do not doubt, be done when the Parliament of Canada meets, provision is made that all sums payable for compensation shall form part of the working expenditure of the railway company, which is a first charge upon its revenues.

It is manifest, I think, that schedule 1 should not include industries of Municipal Corporations or Commissions, Public Utilities Commissions, Trustees of Police Villages and School Boards, and they have therefore been included in schedule 2.

Schedule 2 also includes the industries of telephone companies and navigation companies. These industries, like those of railway companies, are exceptional in their character, and the reasons for adopting the collective system have no application to them.

In order that additional security may be afforded that the compensation to which employees in the industries in schedule 2 and their dependants may become entitled will be paid, provisions are embodied in the draft bill enabling the Board to require an employer in any industry included in the schedule to commute the weekly or other periodical payments of compensation, (secs. 27 and 28), and also to insure his workmen and keep them insured against accidents in a company approved of by the Board for such sum as the Board may direct.

If it had been practicable to do so without impairing the efficiency of the collective system I should have preferred to include a larger number of industries in schedule 2 in order that with the two systems working side by side experience might demonstrate whether the collective system or that of individual liability was preferable, but I have not been able to satisfy myself that the exclusion from schedule 1 of any considerable number of the industries included in it would not impair the efficiency of the collective system, and I have therefore excluded from it only the industries enumerated in schedule 2. Although but a small number of industries are included in that schedule the operation of the two systems will afford some evidence as to which is the better.

Another reason why it is not expedient to bring these omitted industries within the scope of the act is that by doing so the initial work of the Board would be very greatly augmented and the risk would be run that it would be so overburdened as practically to paralyze its operations. It is, in my opinion, much better that if these industries are to be brought in that should be done later on.

As what I have said has indicated, I have not thought it advisable at the outset to bring within the scope of Part I all employments. The principal industries excluded are the farming, wholesale and retail establishments, and domestic service. There is, I admit, no logical reason why, if any, all should not be included, but I greatly doubt whether the state of public opinion is such as to justify such a comprehensive scheme, and it is probable that when the question of bringing these industries within the scope of the act has to be considered, it will be found that provisions somewhat different from those which are applicable to the industries which it is proposed now to bring within it will be necessary.

I have however made provision for bringing any of these excluded industries within the scope of Part I if and when the Board deems it proper to do so, and its regulation or order bringing them in is approved by the Lieutenant-Governor in Council.

The bill would, in my opinion, fail to do justice to a large body of employees who will not be entitled to compensation under Part I, if it did not provide for a substantial modification of the common law as to the liability of the employer to answer in damages to an employee who is injured owing to the negligence of the employer or his servants.

According to the common law it is a term of the contract of service that the servant takes upon himself the risks incidental to his employment (popularly called the assumption of risk rule), and that this risk includes that of injury at the hands of fellow-servants, (popularly called the doctrine of common employment). The doctrine of common employment is an exception to the general rule that the master is responsible for the acts of his servants when engaged in his work, and has rightly, I think, often been declared unfair and inequitable. The reasoning upon which the exception was justified in the celebrated case of Priestley v Fowler does not commend itself to me as satisfactory, and I doubt whether if the question were to arise now for the first time the same conclusion would be reached. The case was decided at a time when very different views as to the respective rights and duties of employer and employed prevailed than are entertained at the present day, and at a time not far removed from that in which there was upon the Imperial statute book a law which made it a criminal offence punishable with imprisonment for "journeymen manufacturers or others" to agree together for obtaining an advance of the wages of themselves or of any one else, or for lessening or altering their usual hours or time of working.

The unfairness of this doctrine has been recognized by the Imperial Parliament and by the Legislature of this Province in the enactment of employers' liability acts which have modified it but to a very limited extent.

In referring to the legislation of this Province my reference is to the act called the Workmen's Compensation for Injuries Act, which is erroneously so styled, for it is really an employers' liability act.

In my opinion there is no reason why this objectionable doctrine should not, as one of the provisions of Part II of the draft bill provides, be entirely abrogated.

The draft bill also provides for the abrogation of the assumption of risk rule.

The rule is based upon the assumption that the wages which a workman receives include compensation for the risks incidental to his employment which he has to run. That is, in my judgment, a fallacy resting upon the erroneous assumption that the workman is free to work or not to work as he pleases and therefore to fix the wages for which he will work, and that in fixing them he will take into account the risk of being killed or injured which is incidental to the employment in which he engages.

Another rule of the common law is unfair to the workman. Although the employer has been guilty of negligence, if the workman has been guilty of what is called contributory negligence and his injury was occasioned by their joint negligence the employer is not liable. The injustice of this rule consists in this, that though the employer may have been guilty of the grossest negligence, if the workman has been guilty of contributory negligence, however slight it may have been, and his injury was occasioned by the joint negligence, the employer is not liable.

It is proposed by the draft bill to substitute for this rule that of comparative negligence as it is called, and provide that contributory negligence shall not be a bar to recovery by the workman or his dependants but shall be taken into account in the assessment of damages.

That in making these recommendations I am not advancing any novel proposition is shown by the fact that what I propose should be done in this Province has already been done in some of the States of the neighbouring Republic, and that the rules which it is proposed to abrogate or modify no longer meet the requirements of modern industrial conditions and are unjust as applied to the complex relations of master and servant as now existing, and to the use of complicated machinery and the great and dangerous forces of steam and electricity of to-day is the generally accepted view, and was the unanimous opinion of the Employers' Liability and Workmen's Compensation Commission of the United States (Report of Commission, Vol. I, pages 1,213 and 1,214).

Having outlined the provisions of the draft bill I have submitted to Your Honour and stated my reasons for recommending their adoption I proceed to a consideration of those provisions of the draft bill submitted on behalf of the Canadian Manufacturers Association and which, I assume, embodies its views as to the form which a proper compensation law should take, which differ from

those of my draft bill, omitting such of the points of difference as I have already discussed.

The compulsory provisions of the draft bill of the Association apply only to industries in which three or more persons are regularly employed, but the option is given to employers in industries in which less than three persons are employed to come under the provisions of the act. The application of the act is not so limited in my draft bill, but provision is made (sec. 73) that the Board may withdraw or exclude from a class industries in which not more than a stated number of workmen are employed, and that an employer in any industry so withdrawn or excluded may nevertheless elect to become a member of the class to which but for the withdrawal or exclusion he would have belonged.

In my opinion it is most undesirable that there should be any such limitation of the application of the act as the Association proposes. As I have already pointed out, it is to industries in which a small number of workmen are employed that the provisions of such an act are peculiarly applicable -- as to the small employer, to prevent his being ruined as the result of an accident in his establishment, and as to his workman to insure that he will be compensated if he meets with an accident.

I am very doubtful whether it is desirable to adopt the provisions of section 73 of my draft bill. My object in introducing them was to make easier the work of the Board at the outset, and not with any idea that the power would be exercised except as a temporary expedient to lessen the work of the Board in the early stages of the administration of the act.

The proposition advanced on behalf of the Association in the early stages of my enquiry, that employees should be required to contribute to the accident fund, has apparently been abandoned, as I do not find in its draft bill any provision of that kind. I find in it, however, a provision (sec. 43) that the Board, if satisfied that in any employment the workmen are "desirous of an increase in premiums, may by order sanction any such increased scale and may provide the method of collecting the increase in the premiums from the workmen in such employment."

In my opinion it is not desirable to complicate the act by the introduction of any such provision. It would not, I think, be taken advantage of by workmen, and it is difficult for me to understand exactly what it means. Is it intended that it shall be applicable to a single establishment or only to a class? Are the workmen to be unanimous, or can the power which the section confers be exercised if a majority of them desires an increase in the scale of compensation on the prescribed condition? If the workmen must be unanimous, the section, I have no doubt, will be a dead letter. If it is intended that a majority shall suffice, the provision is, in my judgment, highly objectionable. Sub-section 2 of the section seems to be inconsistent with sub-section 1 or incomplete, in not providing that if the employer pays the increased premium he may deduct it from the wages of the workmen.

The mode in which the assessments are to be collected proposed by the Association differs somewhat from that provided for by my draft bill. The mode which I provide for is, I think, the simpler.

I do not like the term "premium" which is used in the Association's draft bill to designate the rate at which the employer is to be assessed. I prefer the terminology which I have used. What is levied by the Board is not a premium but an assessment.

The draft bill of the Association has but one schedule of industries to all of which the act applies, and it makes no provision for abrogating or modifying the rules of the common law as to employers who are not within the scope of the act. How my draft bill differs from this will be apparent from what I have said in dealing with the general plan upon which it has been drafted.

By my draft bill (sec. 60) the Board is given exclusive jurisdiction as to all matters and questions arising under Part I, and subject to its power to rescind, alter or amend any of its decisions or orders, its action or decision is final and is not subject to appeal.

It is difficult to understand from the Association's draft bill what the jurisdiction of the Board is intended to be. Section 21 provides that the Board shall have jurisdiction to enquire into, hear and determine all matters and questions of fact and law *necessary to be determined in connection with compensation payments and the administration thereof and the collection and management of the funds thereof*.

This language would confer on the Board a rather limited jurisdiction and probably, judging from the provisions of section 22, less than the draftsman intended it should have. The decisions and findings of the Board upon questions of fact are made final and conclusive, but on questions of law an appeal is allowed.

In my opinion it is most undesirable that there should be the appeal for which the draft bill provides. A compensation law should, in my opinion, render it impossible for a wealthy employer to harass an employee by compelling him to litigate his claim in a court of law after he has established it to the satisfaction of a Board such as that which is to be constituted, and which will be probably quite as competent to reach a proper conclusion as to the matters involved, whether of fact or law, as a court of law.

I may point out that section 23, which allows an appeal from the decision of the Board on "questions of law," appears to be inconsistent with section 22, for in the determination of the questions enumerated in that section which are to be deemed questions of fact it may be necessary to decide questions of law, and I confess that I do not quite understand what kind of questions, if those enumerated in section 22 are eliminated, it is intended to make appealable.

In a note to section 22 it is stated that "it is submitted that it would not be wise to entirely shut out appeals and place in the hands of the Board the sole right to interpret the act .... and the right to define its own jurisdiction." What

danger is to be apprehended from conferring these rights I do not understand, nor do I see what questions as to the construction of the act are likely to arise other than those enumerated in section 22.

In my judgment the furthest the Legislature should go in allowing the intervention of the courts should be to provide that the Lieutenant-Governor in Council may state a case for the opinion of a Divisional Court of the Appellate Division of the Supreme Court of Ontario, if any question of law of general importance arises and he deems it expedient it should be settled by a decision of a Divisional Court. Although I say this my judgment is against the introduction of any such provision, as it is probable that if any form of appeal to an appellate court is allowed, a defeated litigant will have the right to take his case to the Judicial Committee of His Majesty's Privy Council.

Section 10 of my draft bill, which deals with the case of sub-contractors and is applicable only to industries mentioned in schedule 2, is taken from the British Compensation Act. As the Association's draft bill does not provide for individual liability in any case, no provision corresponding to section 10 is found in it.

Sections 66, 67, and 68 of the Association's draft bill deal with the case of subcontractors. They are, in my opinion, unnecessary and undesirable.

The draft bill of the Association is made to apply to the Crown. My draft bill is not. Apart from the question of the jurisdiction of a Provincial Legislature to affect the Crown as represented by the Dominion, it is in my opinion inexpedient that the act should apply to the Crown. It would be quite anomalous to group the Crown in respect of road-making, for instance, with other road-makers, and to make assessments upon the Crown as in the case of private persons.

I have no doubt that in case of injury to an employee of the Crown, for which if his employer were a private person he would be entitled to compensation, the Crown would make the like compensation to him and avail itself of the services of the Board for the determination of the amount and nature of the compensation.

The Association's draft bill (sec. 4) disentitles the workman and his dependants to compensation if his injury was, in the opinion of the Board, intentionally caused by the workman, or was due wholly or principally to intoxication or serious and wilful misconduct on the part of the workman. My draft bill provides that compensation shall not be payable where the injury is attributable solely to the serious and wilful misconduct of the workman unless the injury results in death or serious disablement.

The provisions of section 4 of the Association's bill are, in my opinion, objectionable. There is no need for the provision as to intentional injury as an injury purposely caused to himself by a workman is not an accident, and compensation is payable only in cases of accident and industrial diseases. In addition to this the definition of "accident" in the interpretation section of my

draft bill (sec. 2) makes this abundantly clear; nor is there any reason for introducing a reference to intoxication, the provision as to serious and wilful misconduct being sufficient to cover any case in which drunkenness ought to bar the right to compensation. Section 4 applies whatever may be the result of the injury. The corresponding provision of my draft bill, following the British Compensation Act, does not apply where the injury results in death or serious disablement.

By my draft bill, following in this respect the British act, industrial diseases are put on the same footing as to the right of compensation as accidents. The Association's bill applies only to accidents. The diseases to which the act is to be made applicable are six in number and are enumerated in schedule 3 to my draft bill, but power is given to the Board by its regulations to add to the schedule. It would, in my opinion, be a blot on the act if a workman who suffers from an industrial disease contracted in the course of his employment is not to be entitled to compensation. The risk of contracting disease is inherent in the occupation he follows and he is practically powerless to guard against it. A workman may to some extent guard against accidents, and it would seem not only illogical but unreasonable to compensate him in the one case and to deny him the right to compensation in the other.

The last point of difference between the two draft bills to which I shall make any detailed reference is that as to the scale of compensation.

The scale of compensation proposed by the Association is in my opinion based upon a wrong principle and will not afford reasonable compensation to the injured workman and his dependants; and indeed I doubt whether, if it were adopted, the workingmen would upon the whole be in a much better position than they would be in without the act, especially if the changes in the common law which I recommend are made.

A just compensation law based upon a division between the employer and the workman of the loss occasioned by industrial accidents ought to provide that the compensation should continue to be paid as long as the disability caused by the accident lasts, and the amount of compensation should have relation to the earning power of the injured workman.

To limit the period during which the compensation is to be paid regardless of the duration of the disability, as is done by the laws of some countries, is, in my opinion, not only inconsistent with the principle upon which a true compensation law is based, but unjust to the injured workman for the reason that if the disability continues beyond the prescribed period he will be left with his impaired earning power or, if he is totally disabled without any earning power at a time when his need of receiving compensation will presumably be greater than at the time he was injured, to become a burden upon his relatives or friends or upon the community.

A uniform rate of compensation which has no relation to the earning power of the workman, except as the Association's bill provides, for the purpose of reducing the rate of 50 per cent of his wages is, in my opinion, also

inconsistent with the principle upon which a just compensation law is based, and unfair, and a most undesirable mode of fixing the amount of compensation.

Not only is the scale of compensation proposed by the Association open to these objections, but the amount of the compensation is so small that only the lowest paid workman would be compensated to the extent of 50 per cent of the loss of his earning power.

The case of an unmarried locomotive engineer earning $150 a month, not an unusual wage for the engineer of a passenger train, may be taken to illustrate the effect of the Association's proposition. All that he would be entitled to if permanent disability resulted from his injury would be $20 a month, or less than 14 per cent of the loss of his earning power, except in the rare case of his being rendered completely helpless and requiring constant personal attendance, and in that case his compensation would be double that amount.

There are other provisions which in my judgment are still more objectionable. The limitation to $1,500 of the amount of compensation in case of permanent partial disability is, I think, unreasonable, as is manifest from the illustration just given.

The payment of lump sums is contrary to the principle upon which compensation acts are based and is calculated to defeat one of the main purposes of such laws -- the prevention of the injured workman becoming a burden on his relatives or friends or on the community -- and has been generally deprecated by judges in working out the provisions of the British act, and was condemned by the Association itself in the memorandum which it submitted, and which appears in the appendix to my first interim report (pp. 67-69).

The proposition that the maximum compensation in case of the loss of a major arm shall be $1,500 besides being open to the objection I have just mentioned would be most unfair in the case of a labourer, to say nothing of the skilled artisan.

A more unjust and, as it appears to me, extraordinary proposition is that contained in clause (c) of section 31, which provides that in the case of temporary disability no compensation shall be payable unless it results "in the diminution of daily earnings to the extent of at least fifty per cent"; and as far as I am aware and as I should expect, there is no precedent for it in the legislation of any country. As far as I have been able to ascertain, the furthest that any country has gone in that direction is to provide, as do the Washington act (s. 5, clause d) and the law of Norway of July 23rd, 1894, amended by acts of December 23rd, 1899, and June 12th, 1906 (art. 4, par. 2b), that no compensation shall be payable unless the loss of earning exceeds five per cent. In my opinion there is no justification for any such exception even if it is limited as in the Washington and Norway laws.

The scale of compensation which I propose was strongly objected to by the Association as being unfair to the manufacturer, and as imposing upon him a burden that would handicap him in his competition with the manufacturers of the

other Provinces and of other countries, and would tend to divert manufacturing from this Province to other Provinces in which less onerous laws are in force. It was also urged that the scale of compensation is higher than that of any other country. The last objection, if a valid one, means that there can be no progress beyond the point which has now been reached by the country which has provided the highest scale of compensation, for if the objection is valid as to the proposed legislation it would be an equally valid objection to any increase in the compensation proposed for the country which now provides for the highest scale. The question, in my opinion, is not what other countries have done, but what does justice demand should be done. I have no fear that if the bill should become law it will handicap the manufacturers of this Province as the Association appears to think that it will, or that it will divert manufacturing from the Province. There has been in force for some years in the adjoining Province of Quebec a compensation law which imposes upon employers greater burdens that they are subjected to by the law of this Province, and yet it has not been suggested that any such results as are prophesied by the Association have followed from the enactment of the Quebec law.

In order that it may be seen whether the division of the burden between the employer and workman is unfair, it may be well to point out how it will be divided under the provisions of the proposed law. The workman will bear (1) the loss of all his wages for seven days if his disability does not last longer than that, (2) the pain and suffering consequent upon his injury, (3) his outlay for medical or surgical treatment, nursing and other necessaries, (4) the loss of 45 per cent of his wages while his disability lasts; and if his injury results in his being maimed or disfigured he must go through life bearing that burden also, while all that the employer will bear will be the payment of 55 per cent of the injured workman's wages while the disability lasts.

The burden of which the workman is required to bear he cannot shift upon the shoulders of any one else, but the employer may and no doubt will shift his burden upon the shoulders of the community, or if he has any difficulty in doing that will by reducing the wages of his workmen compel them to bear part of it.

It is contended that it is unfair to require the employer to pay compensation during the lifetime of the workman because in many cases it will mean that the workman will receive compensation for a period during which if he had not been injured he would have been unable to earn wages. No doubt that will be the result in some cases, but on the other hand the workman loses any advantage he would have derived had he not been injured from an increase in his wages owing to an improvement in his position, or to an increase of his earning power, or to a rise in wages from any other cause because, except in the one case of a workman who is under the age of twenty-one years when injured, the compensation is based on the wages the workman was earning at the time of his injury.

It must also be borne in mind that the workman is required, as the price of the compensation he is to receive, to surrender his right to damages under the

common law, if his injury happens under circumstances entitling him by the common law to recover or, if he would be entitled to recover only under the Workmen's Compensation for Injuries Act, his right to the like damages as he would be entitled to at common law limited, however, to an amount not exceeding three years' wages or $1,500, whichever is the larger sum.

According to the testimony of Mr. Wolfe (page 141), and there is no reason to doubt the accuracy of his statement, in Germany no less than 84 per cent of the accidents incapacitate the workmen for less than fourteen weeks.

The nineteenth report of the Minister of Labour of France shows that the number of declared accidents in that country in the year 1910, after deducting those which occasioned an incapacity of four days or less, and omitting those which happened in mines, mining and quarries, was 412,278, and that of these 1,650, or a little more than one third of one per cent, were fatal; 5,452, or about one and one third per cent, resulted in permanent disability, and 399,769, or about 97 per cent, resulted in temporary incapacity lasting for more than four days, and that in the remaining 5,407 cases, or about one and one third per cent, the results of the accidents were unknown.

In Great Britain the duration of disability in the cases terminating in 1908 was as follows:

Less than two weeks	11.2 per cent
From two to three weeks	27.3 per cent
From three to four weeks	18.4 per cent
From four to thirteen weeks	37.7 per cent
From thirteen to twenty-six weeks	4.1 per cent
Over twenty-six weeks	1.3 per cent

(24th Annual Report of the United States Commissioner of Labour, Vol. II. pp. 1,525-6).

Similar statistics for Ontario are not available, but it may, I think, fairly be assumed that the great bulk of the accidents for which compensation would be payable under the proposed law will incapacitate the workman for short periods -- 84 per cent probably for less than fourteen weeks -- and that the fatal accidents and those causing permanent disability, total and partial, will be comparatively few. If this assumption is warranted there would appear to be not only no reasonable ground for the apprehension of the Association that the employers will be unduly burdened with payments for compensation continuing during the lives of permanently injured workmen, but it is certain that under the proposed law as to the vast majority of accidents in every case in which there could be recovery at common law or under the Workmen's Compensation for Injuries Act, the workman will be worse off than he is at present, and his loss will be a direct gain to the employer, amounting annually to a very large sum.

My conclusion is that for all these reasons there is no valid ground for the objections of the Association to the scale of compensation which I have proposed.

I have, however, upon further consideration come to the conclusion that as the purpose of the proposed law is to protect the wage earner there is no reason why highly paid managers and superintendents of establishments, to which Part I is applicable, should be entitled to compensation out of the accident fund to an amount greater than the highest paid wage earner would be entitled to receive, and I therefore recommend that the draft bill be amended by adding the following subsection 1 of section 39:

"But not so as to exceed in any case the rate of $2,000 per annum."

If no such limit is prescribed the result would be that the small employer, in the case of an accident happening in another establishment to a highly paid official, would be unduly burdened. I propose $2,000 as the limit because that sum is probably the maximum amount earned in a year by the highest paid wage earner. The only remaining provision of the draft bill to which I shall refer is section 68, which provides for a contribution by the Province to assist in defraying the expenses incurred in the administration of the act. I have not ventured to suggest what this contribution should be but, in my judgment, it should be a substantial one. The effect of the proposed law will be to relieve the community from the burden of maintaining injured workmen and their dependants in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the Board of the determination of claims for compensation, which will lessen very much the cost of the administration of justice.

There is one matter which should be provided for for which provision has not been made in my draft bill. No provision is made for contribution by employers in the industries mentioned in schedule 2 towards defraying the cost of administration. This was an oversight, and I recommend that a section be added to the bill providing that "the employers in industries for the time being embraced in schedule 2 shall pay the Board such proportion of the expenses of the Board in the administration of this part as the Board may deem just and determine, and the sum payable by them shall be apportioned between such employers and assessed and levied upon them in like manner as in the case of assessments for contributions to the accident fund, and all the provisions of this part as to assessments shall apply mutatis mutandis to assessments made under the authority of this section."

It is the purpose of my draft bill to empower the Board in determining the proportions of the contributions to be made to the accident fund by employers to have regard to the hazard of each industry, and to fix the proportions of the assessments to be borne by the employer accordingly, and not to require that the proportions for each class or sub-class should be uniform; and also to permit the Board, if in its opinion the character of any class of industry justifies that being done, to require a larger contribution to the reserve fund by the employers in any such class than is required from employers in other classes.

The bill as drafted will, I think, accomplish this purpose, but if any doubt is entertained as to it, the bill can be amended by the addition of a section expressly so declaring.

I may be permitted to say, in conclusion, as the United States Commissioners said with reference to the bill drafted by them, that I submit the proposed law "not believing that it is the most perfect measure which could be devised nor the last word which can be said upon the subject, but as the result of careful investigation and the best thought of the Commission and as constituting at least a step in the direction of a just, reasonable, and practicable solution of the problem with which it deals."

I regret that some of its provisions do not commend themselves to the judgment of the Canadian Manufacturers Association, and on that account I have, since my last interim report, again carefully and anxiously considered those which are objected to and the objections that are urged against them, as well as the provisions of the Association's alternative proposition, but have seen no reason for doubting the correctness of the conclusion to which I had come, the results of which are embodied in the draft bill.

In these days of social and industrial unrest it is, in my judgment, of the gravest importance to the community that every proved injustice to any section or class resulting from bad or unfair laws should be promptly removed by the enactment of remedial legislation and I do not doubt that the country whose Legislature is quick to discern and prompt to remove injustice will enjoy, and that deservedly, the blessing of industrial peace and freedom from social unrest. Half measures which mitigate but do not remove injustice are, in my judgment, to be avoided. That the existing law inflicts injustice on the workingman is admitted by all. From that injustice he has long suffered, and it would, in my judgment, be the gravest mistake if questions as to the scope and character of the proposed remedial legislation were to be determined, not by a consideration of what is just to the workingman, but of what is the least he can be put off with; or if the Legislature were to be deterred from passing a law designed to do full justice owing to groundless fears that disaster to the industries of the Province would follow from the enactment of it.

All of which is respectfully submitted.

W.R. MEREDITH, Commissioner.

Dated at Osgoode Hall, Toronto,
the 31st day of October, 1913.