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WORKMEN'S INSURANCE AND COMPENSATION SERIES

PROCEEDINGS OF THE SIXTH ANNUAL MEETING  
OF THE  
INTERNATIONAL ASSOCIATION  
OF INDUSTRIAL ACCIDENT  
BOARDS AND COMMISSIONS

HELD AT TORONTO, CANADA,  
SEPTEMBER 23-26, 1919



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## PROCEEDINGS OF THE SIXTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, TORONTO, CANADA, SEPTEMBER 23-26, 1919.

*TUESDAY, SEPTEMBER 23—MORNING SESSION.*

CHAIRMAN, GEORGE A. KINGSTON, PRESIDENT I. A. I. A. B. C.

### WORKMEN'S COMPENSATION LEGISLATION.

The CHAIRMAN. In calling this convention to order I do so, I am sure, with a great deal of pleasure. I am delighted to see so many of you present. We have approached this convention somewhat with fear and trembling, but as the day of the convention drew near we began to realize that there was a very intense interest in the work of our compensation boards throughout every jurisdiction that has membership in our association, and I was delighted to see the indication that we were going to have a splendid convention from the point of view of attendance.

The more formal addresses of welcome will be presented at this evening's session, so that I will not say more at the present time than to extend to you a very cordial welcome, and we will proceed with the opening paper by Dr. Royal Meeker. Dr. Meeker, we will be pleased now to hear your paper.

Dr. MEEKER. I was asked to speak to the subject of "Minimum requirements in workmen's compensation legislation." Before beginning to speak directly to that subject I want to say that I do not agree with many who hold that it is wholly impossible and even undesirable to have a uniform compensation law in all of the States of the Union at least, if not in all of the Provinces of Canada as well. I see no reason why we should have the discrepancies and clashing provisions in our different compensation laws. Many make the point that a State which is almost wholly agricultural can not have the same compensation law as a large manufacturing State with diversified industries. Almost all of our great industrial States have all the industries represented within their borders. They have

no difficulty whatsoever in administering one identically uniform law throughout the State. The same is true of the Province of Ontario and the other more highly developed Provinces of Canada. There are differences in wages, to be sure; there are differences in industrial conditions; but all that can be taken care of in a single uniform law.

Many people grant the theoretical desirability of uniform compensation legislation, but say that it is practically impossible of achievement. Again I do not agree. It is theoretically possible and it is practically possible and desirable to achieve it. I do not mean that it can be achieved to-morrow or day after to-morrow, but it is a goal that we should fasten our eyes upon—a goal that is worth achieving and a goal that can be achieved. I for one shall work constantly for greater and greater uniformity in our compensation laws, so that we will not have the utterly impossible conditions that now prevail.

## MINIMUM REQUIREMENTS IN COMPENSATION LEGISLATION.

BY ROYAL MEEKER, UNITED STATES COMMISSIONER OF LABOR STATISTICS.

### IS UNIFORMITY DESIRABLE AND FEASIBLE?

Many persons interested in workmen's compensation believe it to be wholly impossible and even undesirable ever to achieve uniformity in workmen's compensation legislation. It is argued that wages and conditions of labor, kinds of industry, and classes of occupations vary so from State to State as to make it impossible and undesirable to have one uniform compensation law for all States from the Atlantic to the Pacific and from the Arctic Ocean to the Gulf of Mexico. It is worth while, however, to ponder upon the fact that in the great industrial States like Pennsylvania, New York, Ohio, and Illinois practically all the industries of the country are to be found, and no one has suggested enacting separate laws to cover different geographical and industrial sections in each of these States. The New York State law now covers longshoremen, the building trades, steel workers, lumbermen, sawmill operators, paper-box makers, machine-shop employees, miners and quarrymen, and the greater number of employees in all of the industries that are ambiguously termed hazardous in character. No difficulty is found in applying the same principles of compensation to the multitudinous occupations within these industries. Is there any reasonable reason why a seaman or a railroad employee should not be entitled to the same treatment in case of disabling accident or illness as the worker in a glue factory or a garage?

Some persons profess to see reasons why the compensation law which works fairly satisfactorily in a State of mixed industries like New York can not work equally well in the purely mining State of Nevada. The arguments advanced in support of this notion are funny enough to make one laugh if they did not imply such tragic consequences. A miner whose leg is broken in a gold mine in Colorado half a mile below the surface of the earth suffers no different sort of a disability from a lumberman whose leg is broken on a skidway in Louisiana or a motorman whose leg is broken by a street car in Brooklyn. The loss of an eye requires the same medical and surgical treatment whether caused by a chip of steel in a shipyard of Seattle or by a piece of granite in a quarry of Vermont. Medically, it makes no difference in what locality, industry, or occupation

a particular kind of injury occurs. Of course, the economic effects of the same type of injury vary with different occupations. All compensation laws, except in California, ignore this important fact, so that under the accepted theory and practice of compensation the fingers of the violinist, the pianist, or the typist are of no more consequence than the fingers of an elevator boy or a bell hop; the loss of a leg by a slag shoveler is exactly equal to the loss of a leg by a bookkeeper. This theory and this practice are wrong, but no new question is presented by the proposal to enact a uniform compensation law.

An adequate compensation law could easily be drafted to cover the great diversity of industries and of conditions throughout the whole United States and its possessions and Canada very much better than any State or provincial law now covers the industries within its own borders. Under such a law it will make no difference to the worker whether his hand is crushed by a falling rock in a copper mine in Arizona or in an exposed gear in a machine-building plant in Connecticut, or in the rolls of a laundry in Wisconsin. The differences in wages, hours, and conditions of work offer no obstacles whatsoever to the administration of an absolutely uniform compensation law providing uniform and adequate medical, surgical, and hospital treatment and money compensation according to a uniform scale, taking account of the economic effects of the injury and the employment and the wages or earnings of the injured worker.

The same injuries ought to receive the same surgical and medical treatment and the same degree of economic benefit whether received in California, Maine, or Oklahoma; whether the injured worker was getting a dollar a day as an unskilled Negro laborer in Florida or ten dollars a day as a skilled machinist in Massachusetts; whether he was working a mile under the surface as a miner or 500 feet in the air as a structural-iron worker; whether on a vessel a thousand miles from land or on an Iowa farm a thousand miles from the sea. There is no reason why the State of Nevada, with a population of 111,000, any more than the State of New York, with a population of 10,500,000, should conduct its industries as though they were bankrupt and must be subsidized by the lives, limbs, and sufferings of the workers. It makes no difference whether a State has a single industry or a hundred different industries; the same compensation law, providing adequate medical and money benefits, can apply to each, and the same methods of administration must be provided for if the law is to accomplish what compensation laws are supposed to do.

“The laborer is worthy of his hire.” Employers and the public are reluctant to admit this Biblical axiom. Even to-day they are trying to compromise with the worker on a 20 or 30 per cent basis.

Certainly the worker's hire should provide adequate surgical and medical care for injuries he suffers as a result of his employment and money compensation sufficient during his period of disability to maintain his family in decency and health. To a just mind it seems that society should lift the economic burden from the shoulders of the worker who has the misfortune to be injured as a consequence of his employment. Workers can not be relieved of the physical and mental suffering and the inconvenience caused by disabilities, and these burdens are heavy enough without the additional worry and burden resulting from loss of earnings and increase of expense for medical treatment. Yet the employers and the general public for years worked together to put and keep all the economic burdens of industrial injuries upon the workers. Since 1912 a small but appreciable part of these economic burdens so cruelly shoved off upon the helpless victims of industry by our heartless courts and inhuman lawyers has been lifted. As a consequence we are in danger of assuming the holier-than-thou pose of the Pharisees, pointing with pride to our great generosity in dealing with the victims of industrial accidents. Let us refrain from patting ourselves on the back and piously thanking God that we are not as the Eskimos and the Hottentots until we have made provision for at least 50 per cent of the cost of industrial accidents to not less than one-half of our working population. Until the public has achieved this standard as a minimum, it can hardly pose as a philanthropist and get away with it. When all limitations applying to both medical and money benefits are taken into account not one compensation law in the United States and Canada measures up to a standard of 50 per cent of adequacy. May Heaven and public opinion hasten the day when we shall have a uniform and adequate compensation law throughout the two great English-speaking nations of North America.

However, I am not supposed to speak to you concerning the desirability and practicability of adopting a standard uniform compensation law. My task is much simpler and much more difficult. I have merely to suggest to the members of the International Association of Industrial Accident Boards and Commissions what I consider the minimum standard requirements which a compensation law must contain before it deserves the name of a compensation measure. If we accept the dictionary definition of compensation as that which is given as an equivalent, then our best efforts lack about 400 per cent of being compensation laws, while the more backward States like Wyoming and New Hampshire can not be said to have done any more than register a pious and much qualified approval of the compensation principle to a very limited degree in a few selected industries.

**THE PURPOSES OF A WORKMEN'S COMPENSATION LAW.**

The title of an adequate workmen's compensation law should state clearly that its sole purpose is to prevent, so far as is humanly possible, the human wastage in industry. To accomplish this purpose effectively, the law must provide somewhere for the exercise of the six functions enumerated below: (1) Preventable industrial accidents and illnesses must be prevented; (2) workers injured by either accident, disease, or poison must be restored as completely and as quickly as possible by the best obtainable doctors and surgeons; (3) money benefits must be provided to enable the worker and his dependents to live during the period of his total or partial disability without the assistance of public or private charity; (4) the injured worker when restored as fully as possible should be retrained, if necessary, to take up real work suited to his ability and his disability; (5) when ready to go back to a bona fide job in real industry the injured worker should be placed and kept in suitable employment through a public employment system; (6) the injured worker must be kept track of and physical reexaminations given him when necessary.

It is not absolutely necessary that all six of the functions stated above should be vested in the board to administer the compensation law, but if not the closest cooperation between the different administrative bodies must be made obligatory. No so-called compensation law can be called adequate which does not make provision for the exercise of the six functions enumerated.

The prevention of accidents through reconstruction of plants, installation of safety devices, and safety instruction among the workers should be provided for and encouraged in every legitimate way. The principal object of a workman's compensation law should be to avoid the awarding of compensation to injured workers, not by providing exceptions and loopholes to enable employers and insurers to get out of paying for injuries incurred, but by making preventable accidents impossible, by curing all curable injuries, however incurred, as rapidly as can be, by placing injured workers in suitable jobs, and by keeping track of them so as to prevent their taking up work which would aggravate their injuries. The authorities having charge of the administration of the compensation laws should be kept awake nights devising schemes by which compensation obligations can be reduced to the irreducible minimum. Nearly all compensation boards are obliged to devote almost their whole time and energy to hearing cases and handing out to cripples, widows, and orphans the niggardly doles provided in their laws for the victims of the industrial juggernaut. Our lawmakers have thus far failed to grasp the fundamental economic and ethical principles of workmen's compensation.

## COVERAGE.

Workmen's compensation laws should include all workers in specified wage or salary groups in all industries, using industries in the broadest sense to include agriculture, mining, lumbering, transportation, distribution, merchandising, and domestic service as well as manufacturing. No exemptions should be made for employers of small numbers of workers. There is no sense in granting compensation benefits to one worker because his employer has eight workers and withholding them from another because his employer has only seven workers. Public employees should be included on the same basis as private employees. The attempt to divide industries into hazardous and nonhazardous groups has resulted in nothing but confusion trebly confounded. Some industries have been excluded from some compensation laws on the ground that these industries were nonhazardous. Others have been excluded because they are too hazardous. The arguments put forth in support of such laws are too absurd to merit serious refutation. If there be a nonhazardous industry in which accidents never occur there is no earthly reason why the industry should not be included under the compensation law. It ought to be clear that it would cost nothing to include under the compensation laws an industry or an occupation in which accidents never occur.

Coming back to earth again, and considering industries as they really are, it must be recognized that no industry or occupation within an industry is free from the accident hazard. Accidents whenever and wherever they happen should be provided for in the compensation law. The farm hand suffering from an injury due to his employment should have adequate medical, surgical, and hospital service as much as the factory employee. A worker injured in a so-called nonhazardous occupation has to pay for medical and surgical services and the necessaries of life just as does the worker injured in the most hazardous occupation. The judicial theory evolved by our courts holds that the workman is paid for the hazard inherent in the industry he enters. If this venerable theory were correct, there would be a stronger argument for enacting workmen's compensation laws for the less hazardous than for the more hazardous occupations and industries. For if the courts had reasoned from fact, the workers engaged in hazardous occupations would receive wages sufficient to enable them to provide themselves with insurance protection purchased from private insurance companies against the hazards of their work, whereas the workmen engaged in less hazardous occupations would have no such surplus of wages to invest in insurance, and therefore when injured would be without insurance protection. It has been pointed out over and over again that the

reasoning of the courts in this matter has been utterly fallacious. Wages have little or no relation to the hazard of work. Workers in the more hazardous occupations need insurance quite as much as those in the less hazardous occupations. Stated in a nutshell, justice requires that an industry should pay the cost of producing its products. Certainly the loss of life, limb, or health to the workers engaged in industry is just as much a part of the production costs as are the wear and tear on the machinery and tools used in the spoilage and wastage of the raw materials worked up.

Unless an industry makes provision for all of the costs of production, that industry is trying to get something for nothing. It is not standing on its own feet. It is often urged that it is impossible to extend compensation laws to include agriculture and domestic service. The New Jersey law, the first compensation law enacted in the United States, included agricultural workers and domestic servants. This seems to be a sufficient answer to the contention that it can not be done. I do not mean to imply that the New Jersey law can not be improved, but New Jersey did extend compensation law to agricultural and domestic workers, and this can be done and should be done in other States. It is often urged that the relation of master and servant in the good old-fashioned industries of agriculture and domestic service are so ideal that it is wholly undesirable to have such a coldly commercial proposition as workmen's compensation come in to disturb these beatific reminders of Arcadian simplicity. I have worked under the idyllic Arcadian conditions prevailing on our farms in Pennsylvania, Iowa, and other States. I have also seen a great deal of the ideal relations existing between house mistresses and their servants, and my belief in the necessity of compensation legislation for these classes has been strengthened by what I have experienced and seen.

Public employees are frequently excluded from benefits under our State compensation laws. This is wholly unjustifiable, and must be corrected if the public service is to be maintained on a proper basis. Provision of proper compensation for injured policemen, firemen, and teachers need not prevent the continuation of special retirement funds to take care of these public officials in old age and invalidity. Special provisions must be made for casual workers. With compulsory community insurance of compensation risks casuals can be readily taken care of.

The dependents of aliens are, of course, entitled to the same treatment under compensation legislation as the dependents of citizens. It may be expedient or necessary to allow for a reduction in the amount of benefits to be paid to the dependents of an alien living in a foreign country so as to give due weight to the difference in the stand-

ard and the cost of living in the country of residence as compared with the United States.

The workmen's compensation law should not merely permit all employers in all industries to come under the law. The employer should be given no option in the matter. The "take it or leave it" principle has no place in a proper compensation law. Workmen's compensation partakes of the nature of taxation by special assessment for a particular purpose. In the Greek Republics when money was needed by the public to carry on war, to construct a road, or to build a theater every citizen was asked to contribute what he felt like giving. The results were far from satisfactory. Centuries ago we abandoned the practice of passing the hat for voluntary donations for public purposes. The expenses of government should not be put upon the conscientious and public-spirited citizens alone while the conscienceless and selfish citizens pay nothing. Compensating injured workmen for their injuries, so far as that is possible, has come to be recognized as a public function, and every employer must be made to contribute his share toward paying the costs, whether he feels like it or not.

#### OCCUPATIONAL DISEASES AND POISONS.

Practically all of the compensation laws of the United States are accident compensation laws. This leads inevitably to considerable confusion and much injustice. Our compensation laws must be extended to include diseases and injuries due to poisons used in the industry. I am fully cognizant of the difficulties of administering laws compensating employees for injuries due to industrial diseases and poisons. The difficulties are admittedly great, but they are not insuperable, and justice demands that employees be compensated for the injuries incurred incident to employment whether due to accident or to industrial disease or poison. No list of compensable diseases should be provided, but the compensation commission should be given power to grant compensation awards for all injuries incident to employment. Happily there seems to be a growing recognition of the right of the employee to compensation on the basis of injury whether due to accident or to any other cause. Five States (Massachusetts, California, Connecticut, Wisconsin, and North Dakota), the Territory of Hawaii, and the United States Government now have compensation laws which cover occupational diseases. The laws differ considerably in the different jurisdictions, as do also the administrative practices, so that uniformity is yet far in the future.

**INSURANCE.**

All workmen's compensation risks should, of course, be insured. Four of our States still fail to measure up to this fundamental standard of adequacy in their compensation laws. No private competitive profit-seeking companies should be permitted to write workmen's compensation insurance. Insurance is the simplest of all business. Adam Smith more than a hundred years ago referred to banking as a business so simple that it could readily be conducted by the State, and he suggested that the State should take over banking. If banking is simple, insurance is simplicity simplified. Those engaged in insurance strive to make it look very formidable and complicated, with occult actuarial computations and intricate statistical tabulations. In the last analysis, however, insurance is merely the distribution of inevitable individual losses among a number of individuals instead of permitting each loss to fall upon the particular individual or family suffering the misfortune. Of course, the larger the number included the more stable the risk of loss becomes. It does not require occult actuaries for the conduct of the insurance business. Insurance was carried on in a fashion even before statisticians were invented. Statisticians are, of course, necessary to calculate the probable cost of insurance. The first insurance business, however, was carried on with no exact knowledge of costs. It arose in this wise: A shipowner having a vessel at sea sought out a good sport and made a bet with him that his vessel and cargo would not reach port. If the vessel and cargo were lost, then the good sport paid the shipowner his bet; if the vessel did reach port, then the shipowner paid his bet, and tried to recoup himself from the sale of the cargo. Insurance originated as a gamble, and unfortunately some gambling features still persist, especially in our casualty insurance companies. The object of this brief discussion is to show that the insurance business is so simple that it can readily be carried on by the State. Insurance can be conducted by the State at less than half the cost to private competing companies. The heaviest items of cost under competitive insurance are the expenses of agents employed to write new insurance, to renew expired policies, and to collect premiums. All three of these items would be reduced practically to zero under a universal compulsory State insurance system.

The safe investment of surplus and reserve funds and their insurance against losses is another item of large expense to private competitive insurance companies, which would be largely done away with under monopoly State insurance. Great economies would also result from having one central office instead of many competing offices with their overhead expenses. A great deal of the statistical and actuarial work now done by the competing companies, each

seeking to get an advantage over the others, is utterly useless camouflage or misleading "bunk" and should be eliminated.

The arguments for compulsory insurance in an all-inclusive State fund are overwhelming. If all profit-seeking stock companies are eliminated, I see no reason why employers should not be permitted, or rather encouraged, to form mutual associations under the supervision and control of the State insurance fund. Of course all employers should be required to contribute proportionally to a catastrophe fund and possibly to a life-pension fund to take adequate care of invalidity and death. I am very clear that no individual employer should be permitted to carry his own risk. The State insurance fund should function so smoothly and swiftly that employers showing a favorable accident experience would at once profit by dividends or by a reduced rate below the normal, or both.

In the Middle Ages it was the usual practice for the king to farm out the taxes. Under this system the king gave authority to the tax farmer to collect, say, 200,000 livres in taxes on condition that the farmer pay to the king at once 100,000 livres. The Parliament in Great Britain and the Revolution in France are supposed to have put an end to the abuse and injustice of tax farming. Yet it still persists in the United States, at least in the field of workmen's compensation. The tax farmers of to-day are the insurance companies which assume for the employers the burden of compensation costs under the law in return for the payment of insurance premiums. This system is defended vigorously by employers generally, although it has been demonstrated to be at least twice as expensive as a system of public insurance. It is disconcerting to the economist trained in the theories of laissez faire and of the benevolence of enlightened self-interest unhampered by the shackles of legal restrictions to find employers fighting viciously for the privilege of paying \$2 for a thing which could be purchased for \$1. I believe in vigorous, intelligent, progressive paternalism. It is a paternal duty to deprive children of colicky green apples and dyspepsia-producing candy, and, if they set up a howl, it may become a paternal obligation to paddle them thoroughly. Employers are peculiarly childlike in many ways and frequently need the strong paternal hand of the State to guide them aright. It is only the paternalism which guides and checks which is objected to by business men. They are loudest in their clamor for paternal protective tariffs and subsidies for what they believe to be their particular interests—a brand of paternalism which is indeed ill-advised and dangerous.

#### WAITING PERIOD.

Up until this legislative year 17 States had a waiting period of two weeks, during which time the injured employee received neither

earnings for his work nor compensation for his disability. Only 15 States and 6 Canadian Provinces had a waiting period of one week or less. The excuse for requiring such a long waiting period is the bugaboo of malingering. Malingering flourishes nowhere so luxuriantly as in the imagination of employers and those who voice their opinions. The first Federal civil employees' compensation bill was ingeniously devised to cultivate and encourage any tendency to malingering that may be inherent in employees of the United States Government. The law provided a waiting period of 14 days. If the injured employee remained disabled 14 days or more he was given compensation for the full amount of his salary or earnings for the full time of his disability. The accident statistics under this law, when considered superficially, seemed to prove the assumption that the working man is prone to malingering, since a seemingly disproportionate number of disabilities terminated on the fourteenth day. A more careful analysis of these figures, which I caused to be made, showed little or no evidence of malingering.

Workers as a rule are honest. The amount and cost of malingering is enormously exaggerated by employers and their representatives. Of course, there are tricksters and shamblers among workers, as there are among bankers, railroad magnates, judges, and legislators. Because a few shamblers try to get more than they are entitled to under any compensation law is a poor, shabby excuse for enacting a law designed to short change and short weight all injured workers, the just as well as the unjust. Some legislators have apparently endeavored so earnestly to make their laws malingering-proof that they have enacted laws so inadequate, so niggardly, so penurious, and so difficult as to discourage large numbers of injured workers from making any claims to benefits provided. Legislators must be made to comprehend that the main purpose of a workmen's compensation law is to give justice to injured workers, not to prevent malingering. Happily, the tendency in workmen's compensation legislation is toward shortening the period during which the injured worker must live on his fat, as it were. Twenty-one States and six Provinces now have a waiting period of one week, while the United States compensation law has only three days. It is necessary to have a waiting period to cut down the great labor of administration. This period should be made only long enough to exclude trivial injuries. The Federal Compensation Commission finds the three-day limit very satisfactory. Some favor granting compensation for the full period in case the disability persists for more than a prescribed period. I think it is much better to cut the waiting period down to three days, which has been demonstrated to be a workable limit, and give no compensation for that period.

**MEDICAL BENEFITS.**

As I have already indicated, medical benefits are much more important than money benefits. Of course, there can be no waiting period for medical benefits. Compensation laws should provide needed medical and surgical treatment for all industrial injuries. There should be no legislative limitations as to the time allowed for treatment or the amount which the compensation board may pay in medical, surgical, and hospital fees. In no particular is the flagrant extravagance of our parsimonious compensation laws more striking than in those sections which limit medical costs to not more than \$25 to \$75, and to two or three weeks per case. The administrative authorities should be empowered to provide all reasonable medical and surgical skill, and they should be the sole judges of what is reasonable in each case.

If administrative commissions are to be vested with such plenary powers in medical and surgical matters, it goes without saying that a medical man should either be a member of the administrative commission or be assigned to the commission as medical adviser. No commission of laymen can judge what specialist, or even what kind of a specialist, should be consulted by the injured man in a difficult and complicated case. The best way to improve the medical service in my judgment is to give the medical men more power, more responsibility, trust them more, and then hold them to a strict accountability for the results.

**MONEY BENEFITS.**

The money benefits provided under most compensation laws are utterly inadequate to enable the workman to pay ordinary living expenses for himself and family, to say nothing of the extraordinary expenditures he is often subjected to because of his disability. The remissness displayed in compensation laws has been prompted by a false idea of economy. Legislators under the influence of employers have manifested great fear lest the compensation laws should burden industry to such an extent that plants and even whole industries would be driven out of the State or into bankruptcy. Under the liability régime industries refuse to bear the burdens caused by their own accidents. This does not mean that there were no accident burdens until the compensation laws were enacted. In the good old days of *laissez faire* industrial-accident burdens fell with crushing force upon the individuals injured and their families. The community was obliged to contribute very heavily toward the support of those crippled in industry, through poor relief, almshouses, and an enormous but unestimatable loss in the skill and productivity of the worker's children. The community, as a whole, was obliged

to pay taxes for the support of the pauperized victims of industry, but, what is of vastly more economic importance, the community lost enormously in the efficiency of labor because the families of killed or crippled men were driven down below the poverty line. Children were deprived of necessary educational advantages, widows were obliged to seek work to support themselves and their children, and family life was frequently broken up. Unfortunately the compensation laws have not eliminated these evils. They have only made a feeble beginning.

It is or should be an economic axiom that an industry which must depend upon its workers or the community to pay part of its legitimate costs of production is a parasitic industry.

As I stated before, the expense for wear and tear and replacement of the labor force must be provided for as well as the depreciation and replacement of machinery and tools. If an industry is unable to pay these costs, it should not be permitted to exist. I know of no industry so poor that it would die unless its workers and the community carry its accident losses. Some individual plants there are which belong in the pauper class. These pauper plants and pauper industries also, if such there be, should not be permitted to die unassisted. We should give them every assistance to die just as suddenly as possible. Art for art's sake and business for the sake of being busy have no place in the modern State. The parasitical industries which thrive in our midst are parasitical by choice or custom, not by compulsion. All industries should be required, as a minimum, to provide compensation sufficient to maintain injured workers and their families through the period of disability and to recompense the worker for any permanent loss of earning power which he may suffer by reason of injuries due to his employment.

Happily, there is a tendency in our States to increase the percentage of wages to be paid in money benefits for temporary disabilities. Up to this year over 60 per cent of our States allowed only 50 per cent of the loss of wages or earnings during the period of disability. Now the majority of the States allow from 55 to 66½ per cent. All States, in addition, provide a minimum and a maximum amount of money benefits. These minima and maxima are in all cases too low, in view of the enormous rise in the cost of living. I think it is too severe to take even one-third of a worker's earning power at just the time when he needs more expensive food and other necessities. Again, fear of the malingerer has dominated the legislative mind in fixing the parsimonious percentages and the amounts of money compensation. There should be some deduction from full wages or earnings, no doubt, in order to stimulate the injured workers to return to work as soon as recovery is complete. An allowance of 75 per cent of earnings, a minimum of \$12 per week and a maxi-

imum of \$30 per week, would be no more than sufficient in the way of money benefits under the present high scale of prices. Payments should continue throughout the period of disability. In case of death, a smaller percentage allowance will be sufficient, because, with the principal breadwinner gone, the cost of supporting the family is correspondingly reduced. Dead men do not malingers; so there is no ground for cutting the compensation benefit to induce the victim of the accident to return to work. Unless the State wants to punish the widow and orphans as malingerers, there would seem to be no valid excuse for reducing the money benefits for a widow below 30 to 33½ per cent of the deceased husband's earnings, with additions for every child below 16 years, the maximum never to exceed 66⅔ per cent of former earnings.

#### ADMINISTRATION.

The functions of factory inspection, accident prevention, industrial hygiene, medical and surgical treatment of injuries, retraining, replacement, the handling of compensation claims, reporting and compiling of accident statistics, the carrying on of compensation insurance and the compilation of statistical statements showing the costs of the same, should all be centered in one administrative organization. The form of this organization may vary considerably, but it is indispensable that these functions should all be closely tied together so that the cost of accidents may be accurately known and brought home directly to employers, to the end that the number and severity of accidents may be reduced and the treatment of injuries be made as efficient as possible. Probably, an industrial commission embracing all the functions enumerated is as good a plan of organization as can be devised. The commission can be made up of any number of commissioners according to the amount of business which must be handled. If these functions are scattered among independent departments or commissions, administrative efficiency is thereby reduced. No amount of cooperation, coordination, and correlation of independent agencies can supply the lack of a central organization with power to do things. Administration consists in doing things, not in debating and passing earnest resolutions.

Ten of our States have placed workmen's compensation laws on their statute books and have thoughtfully left them to be administered by the courts. This is like intrusting the carrying out of the prohibition amendment to the distillers' and brewers' associations. In the first place, a court is a very slow and ineffective administrator. Time is everything in administration, especially in compensation legislation. The courts in the United States, at least, have not yet fully grasped the idea of compensation. Even the compensation

commissions, I fear, do not always know the true meaning of the laws they are created to carry out.

Canada has at least two great advantages over her sister Republic in carrying forward the compensation principle.

First, Canada has created her compensation commissions with full authority to pass finally on compensation matters. Only the Federal Civil Employees' Compensation Commission has such final jurisdiction in the United States. Our State commissions would be much strengthened, in my judgment, if they were fully responsible judicially and administratively, from first to last, for the carrying out of the compensation laws.

Second, the Canadian commissioners are appointed for long terms or for life. This gives strength and continuity to Canadian compensation administration, which are conspicuously lacking in the United States. The frequent changes in the personnel of our commissions do not make for good administration. Perhaps the new appointees may be as good or better men than those they succeed; still the commission loses the experience and knowledge acquired by the retiring member and the new appointee has to learn a new and a very difficult profession. All workmen's compensation administrators should have full and final jurisdiction over compensation matters, and they should be appointed for life or for a term of not less than 12 years.

#### **ACCIDENT REPORTING AND STATISTICS.**

Every compensation law should provide for the reporting of all accidents and should create a statistical bureau to tabulate the information necessary to the compensation commission in administering the law. Liberal appropriations should be given to the statistical bureau to enable it to gather and present full information as to the number, kind, and severity of accidents, their causes, the nature of injury, the medical and surgical treatment, with the results thereof, and the cost of compensation. Without full information on these matters compensation law administration is but a groping in the dark. The objects are obscure and the results unknown. Our compensation laws fall far short of a standard of adequacy in nearly all respects. Perhaps the most glaring defect of all is the almost total lack of any proper recognition of the place of statistics in the administration of compensation. The physician and the statisticians should be the right and left arms of the compensation administrator. With good medical and surgical service, and with full statistical information of accidents, medical results, and costs, the way of the compensation administrator will be made straight and smooth.

The CHAIRMAN. Gentlemen, it was thought best to defer discussion on the papers of the morning until the conclusion of Mr. Andrus's paper. There is considerable in common in the three papers on the morning program, and it will be quite appropriate, I think, that the discussion which will follow the papers should cover the whole range of the morning program.

We very much regret that the chairman of the Workmen's Compensation Board of Pennsylvania has been unable to come to the convention, but we are very glad, indeed, to have with us the legal adviser of the commission, Mr. F. H. Bohlen, who has prepared a paper—I presume it is on the same subject—and Mr. Bohlen will now take the place on the program assigned to Mr. Mackey.

## SOME COMPARISONS OF WORKMEN'S COMPENSATION LEGISLATION.

BY F. H. BOHLEN.

It is obvious that it is quite impossible to make in the time allotted to me an exhaustive or minute comparison of the many compensation acts in force, even in the United States. I must, therefore, confine myself to a few salient points of difference between the compensation systems in force in the various States in the Union.

Only a few States have put upon the statute books compulsory acts. The great majority of compensation acts are still elective. While at first it may well seem that this is unfortunate, in practice an elective act is generally found to cover substantially all employers and employees. This is certainly so in those States in which the compensation features of the acts are presumed to be accepted in the absence of a rather elaborate rejection thereof.

If one may take the experience of the State of Pennsylvania as a test, it can be safely said that the number of employees who are put outside of the compensation provisions of such an act by their employers' rejection of it is negligible. And, at least in those States in which the State constitution contains, as it does in Pennsylvania, a number of prohibitions against creating new courts or against the establishing of special rules of evidence or method of procedure in special cases, the elective form has a very distinct advantage over the compulsory. It enables the legislature to confer far wider powers upon the board or commission which administers the act, than it could do were the act compulsory, so that a flexible, speedy, and inexpensive procedure can be provided for the adjudication of claims under the act, on the theory that both the employers and employees have agreed to this particular method of adjusting any disputes that may arise under their agreement, on the one hand to pay, and on the other to receive, compensation.

The great bulk of recent acts cover all employments with the exception of those that are casual in character and domestic service and farming. There are a few of even the more recent acts which are restricted to certain specified industries which the legislature chooses to regard as hazardous. Fortunately the proportion of acts which are so restricted is constantly growing less. There is little or nothing to be said in favor of the restriction of compensation to

those industries which are regarded as particularly dangerous. The purpose of the compensation act is not to penalize those who carry on dangerous enterprises, but to make all industries bear, as part of the cost of production, a share of the loss caused to the human beings who take part therein as employees. The greater frequency of accidents in a hazardous business, of course, makes the risk greater and increases this item of cost. Hazardous businesses must pay a higher rate for their compensation insurance. But any business in which an accident occurs is to that extent hazardous, and the unfortunate who loses an arm in a business in which such accidents are rare should not be penalized by being denied compensation.

Again, experience has shown that there is more litigation as to whether a particular employment falls within one of the enumerated classes labeled as hazardous than on any other question, and in these acts in which compensation is restricted to so-called hazardous trades there are many trades included which are far less hazardous than many which are omitted.

There is, perhaps, no logic in excluding even farm labor, and I welcome with real pleasure signs which I have observed in my own State that the many farm owners are becoming converted to the idea of the payment of compensation in lieu of common-law liability, a considerable amount of insurance being written to cover voluntary agreements made outside of the compensation act, which provide for the payment of substantially the compensation which the act requires.

It seems to me a real misfortune that the great majority of the acts recently passed have included in their definition of injuries entitled to compensation the requirement that the accident must arise out of the employment as well as that it must be sustained in the course thereof. It has been found in Pennsylvania that the omission of this requirement has eliminated a quantity of litigation and doubtful questions and narrow and technical distinctions which this ambiguous and ill-understood phrase has raised in other States. There is nothing in the theory of workmen's compensation which requires that the accident from which an employee suffers, or by which he is killed, should in advance be recognizable as an accident of a sort peculiarly apt to occur in his particular employment. That an injury is foreseeable as a probable consequence of an individual's activities may be a proper requirement where the liability is based upon the idea that the individual is at fault in subjecting another to a foreseeable risk. But such an idea has no place in an act in which fault of either side is immaterial and where the only question should be whether a man was injured as a result of his activities in his employment.

The schedules of compensation payable to injured men and to the dependents of those killed vary greatly. While many of the later

acts set the compensation in cases of injury as high as 65 per cent, and some continue the payment during the entire period of disability, many, if not most, of the recent acts require only 50 per cent to be paid for a limited period, generally 300 to 500 weeks.

The usual course of compensation legislation may be said to be an introduction of compensation on a modest basis, followed by amendments which both increase the percentage of wages as compensation and enlarge the time during which it is to be paid. As an example, in the last year both New Jersey and Pennsylvania increased the rate of compensation from 50 per cent to 66 $\frac{2}{3}$  and 60 per cent, respectively, and increased the period during which compensation is payable. These increases may be said to be the result of a compromise, at least in Pennsylvania, where labor urged an increase to 65 per cent for life to the totally disabled man. It is a curious fact that employers as a class, though generally insured or engaged in a business so large as to create an average risk exposure as great as that covered by the policies of many of the insurance companies, look at the possible hardship in particular, though not frequent, cases rather than to the increase in the cost of their premium or on their aggregate compensation liability. They therefore tend to fear the altogether abnormal case where compensation may be payable to an injured man for a period of perhaps 30 or 40 years, though this case is of such rare occurrence that the effect upon the insurance rates of giving a life pension is really negligible.

While there have been increases both in the percentage of wages paid as compensation and in the maximum amount that can be paid as compensation, the increased cost of living and the general rise in wages during the past few years leave the workman to-day in no better, if as good, a position as he was in under the apparently smaller compensation of the earlier acts. Figures prepared by the actuaries of the insurance department of Pennsylvania and of the compensation rating bureau of that State show that in 1916, under the act of 1915, by which on its face injured employees receive 50 per cent of their wages, with a maximum of \$10 per week, they actually received only 47.5 per cent of their actual earnings, due to the fact that in a considerable number of cases the wages were over \$20. In 1918 the average amount received by injured men sunk to 43.8 per cent, and these actuaries computed that even under a proposed amendment raising the percentage to 65 per cent and fixing the maximum at \$13 the average percentage of the actual wage would fall as low as 40.6 per cent. I do not believe that it would be wise to assume that the present high cost of living will necessarily persist or that wages will remain as high as at present. It seems, therefore, inadvisable to attempt at present to change the schedules of compensation so as to make the nominal percentage conform more truly to the real per-

centage of wages now received as compensation. Whatever change is ultimately made should, in my opinion, be along the line of increasing the maximum weekly compensation. Sixty-five per cent of the wages seems to be accepted as the ultimate limit. Any higher percentage would undoubtedly tend not only to encourage conscious malingering, but even more to an inclination, perhaps itself subconscious, to exaggerate the seriousness of an injury, and so would often lead to a prolongation of the period of idleness, when a return to work would be harmless and in many cases even helpful to the physical condition of the man.

Practically all acts provide that for certain major mutilations the exclusive compensation is for a stated percentage of wages during a certain period, varying with the severity of the mutilation, and many give compensation for specified periods for substantially every conceivable mutilation, no matter how minute. This is given either as the exclusive remedy or in addition to compensation for whatever loss of earning power the workman has suffered, though where it is so given the periods are less than where the payments are exclusive of other compensation. On the whole, the latter method would seem preferable and was the one which the chairman of our compensation board unsuccessfully urged the Legislature of Pennsylvania to adopt.

While the loss of a leg or an arm or an eye is generally followed by a very definite loss of earning power, no matter what the trade may be, the effect upon the sufferer's earning power of the loss of one phalanx of a finger varies greatly with the nature of his trade or occupation—so greatly that any value placed upon it would not be an average of probable results, but a more or less arbitrary mean between extreme cases. The teamster who loses the first phalanx of the third finger of his left hand usually loses no working time except while his wound is being cared for, while in many trades which require delicacy of touch the workman is permanently debarred from the exercise of his trade and forced to seek a far less highly paid employment.

Many if not most of the acts provide that minors above the legal working age are to be *sui juris* for all the purposes of the act. This is most advisable and prevents confusion and delay in the signing of agreements and makes it unnecessary that the father or guardian of a child shall sign the receipt for compensation due him.

In the case of death benefits, there is again a wide difference between the different acts. On the whole, the majority tend toward a compensation payable first of all to the widow or dependent widower or children increasing with the depending children surviving. Dependent fathers, mothers, brothers, and sisters come in only if there are no widow, widower, or children. The amounts given vary to an extent which it is impossible to give in detail.

The tendency, especially in recent amendments of earlier acts, is toward increasing the amount of compensation, though only a few States have as yet given a life pension to a widow or dependent widower. Some few have given compensation to children beyond the usual age of 16 or 18, if the children are mentally or physically incapable of self-support. The wisdom of such a provision is, to say the least, doubtful. The amount payable on account of such a child is generally small. It may be enough to secure for the child a certain amount of care in the family of a relative or friend; but it is not enough to give such a child the scientific care which its condition requires. Where the incapacity, though existing, is one which might be removed by proper treatment, the amount given as compensation can not secure the scientific care which often would restore the child to his full status as a useful citizen. On the whole it would seem better that such children should be placed in the many institutions provided by our States for the care and treatment of such cases. And from what I know of the opinion of organized labor, I may say that there appears to be no insistent demand on their part for the continuance of payments to children of this class.

Following the example of New York, there is a tendency to give to widows upon remarriage either the whole or some part of the compensation that would be payable but for the marriage. Such a provision is clearly contrary to the theory upon which compensation acts are based. The widow's remarriage has given her a new breadwinner in lieu of him whom the accident removed. She has, therefore, repaired her own loss. Such a pension can, therefore, only be justified, if at all, if it prevents what is claimed to be a serious condition of immorality and irregular unions into which widows drawing compensation are driven through the fear of losing their compensation if they remarry. If there is any considerable amount of such relations, the mere fear of departing from the theory which underlies compensation laws might not be a sufficient reason for refusing to take steps to terminate the temptation thereto. On the other hand, it may be said that such a dowry is apt to make widows the objects of pursuit by men who would marry them merely for the sake of the money they would get, and that such husbands are not only apt to be bad husbands but to be exceedingly bad stepfathers. The movement toward such payments is the more apt to succeed since it is not opposed by insurance carriers, who assert that experience shows that it would be cheaper to pay a small dowry, so increasing the chance of remarriage, than to pay widow pensions during the full time which the various acts provide.

It is curious that in no act, until the amendments passed by the Pennsylvania Legislature at its last session, was any provision made for a situation which was brought to the attention of the Pennsyl-

vania board almost as soon as the act took effect. It has had before it a number of cases in which a man was killed leaving a widow with or without children of her own, but also a child or children by a former husband who did not live with the widow, but generally lived with the family of the deceased father. The vast majority of acts give the compensation to the widow, generally increased by the reason of the existence of the stepchildren. There is no way in which the widow can be required to devote to the support of the stepchildren the sums which she has received on their account.

In substantially every act the sums due to minor dependents are payable to their guardians. It is very rare that the parent of such children has left a sufficient estate to require the appointment of a guardian for his children. There is therefore no guardian, yet before an employer can safely pay compensation to such a child a guardian must be appointed merely for the purpose of receiving these payments at an expense altogether out of proportion to the amount the guardian will receive and disburse.

The amendments recently passed in the Pennsylvania act give the Pennsylvania board the power, where there is no guardian, to pay the amount due to a minor child to a person or corporation selected by it, who is made accountable to it for the manner in which the payments are applied. This, though a small change, is one which will do away with a great deal of unnecessary expense, confusion, and delay and should be copied in other jurisdictions.

A word may be said as to those sections found in substantially all the acts requiring an injured employee to give notice of his accident to his employer and depriving him of his right to compensation if he fails to do so or does not give some good reason for his failure. The purpose of this requirement is to prevent fraud and malingering by giving the employer a speedy knowledge of the accident, so that he may investigate its circumstances and may observe the injured man. Only a few of the acts make the knowledge on the part of the employer or his representative the equivalent of such notice. A great majority of them require the employee to give notice to the employer himself or, if a corporation, to an officer thereof. When one remembers that the compensation acts are intended to be automatically workable and that they confer rights upon a class whose whole attention is generally directed to earning a living, who have not time to study even those laws which are passed for their special benefit, and who are often foreigners ignorant even of our language, it is obvious that such requirements is one which a great number of the employees, of their own motion, can not be expected to fulfill. Either the employer must, through his foreman, see to all accidents being reported or the injured man must as soon as the accident oc-

curs seek some form of legal advice. It is hardly right to expect employers to go out of their way to perfect claims against themselves, though many, particularly those who are insured, do so, and the whole purpose of the act is to eliminate the need of legal services to enforce compensation. In practice I suspect that this requirement is ignored or that excuses of the flimsiest sort are accepted. At least it should be provided that the knowledge on the part of the employer, or of any person put by the employer in charge of the workmen, of the fact of the accident should be equivalent to notice given by the sufferer.

Practically all of the acts provide that the right to compensation shall be forfeited unless an agreement is entered into or a claim made within a year after the accident, or, in case of death, after the death. It is obviously necessary that some such provision should be contained in every compensation act, and it would be unjust to the employer and might lead to the successful prosecution of false claims if an injured man might delay bringing suit indefinitely, so lulling his employer into a feeling of false security and preventing him from investigating the accident or following up the injured man's condition. On the other hand, experience has shown that a rigid insistence upon action being brought within a year may work hardship and is even capable of being used by unscrupulous employers to defraud the workman of his rights.

I have no doubt that every board or commission charged with the administration of compensation laws must have had cases brought to its attention where an employee has a valid claim to compensation, but has failed to make any claim within the statutory year because he had either been assured by his employer or one of his agents that he was not entitled to compensation or because he had been told that his employer would look after him better than the act would provide for him.

In the first case, the misinformation is often given in good faith; but though the employer is thus acquitted of fraudulent intent, the employee's rights are none the less gone.

In the second case, the employer is often—in fact, almost always—acting in perfect good faith, at least at the time. He offers the man employment of a lighter sort at full wages, an arrangement beneficial so long as it continues, but if for any cause that arrangement is terminated after a year has passed since the accident the employee is as fully debarred from asserting his right to compensation as though the employer's intent had been to defeat the act. While the actual instances of this sort which may have come to my attention have been few, they are sufficient in number to indicate that there are a considerable number of cases of the same sort. In most cases

the employer or his insurance carrier waives the statutory limitation where he is convinced that the employee is himself acting in good faith and reasonably, insisting on the strict letter of the act only when they suspect fraud or unreasonable demands; yet, even so, the result is that the employers and not the board or commission are made the judge of the good faith and reasonableness of their employee's conduct.

It must be admitted that it is extremely difficult to suggest an amendment which would protect both the employer and employee—the employer from stale claims of which few, if any, are meritorious; the employee from the possibility of losing his rights through overreliance upon his employer's generosity or knowledge. I, myself, would hesitate to recommend any particular form. I merely raise the point in order that it may be brought to the attention of your body as a subject worthy of careful thought.

Practically all acts provide that the claims shall be adjudicated and agreements approved by some board or commission. New Jersey, which passed the first effective compensation act, originally placed its enforcement in the hands of its courts, but a few years' experience convinced the legislature of that State that a change should be made, and the New Jersey act is to-day administered by the commissioner of labor and his deputy and the referees appointed by him.

Each State has its own problem of administration. In States where the industries are centered in a few localities a commission which is required to hear every case is an effective and usual method of administration. In other States, like Pennsylvania, where the industries are enormous and widely scattered over a large area, a more elaborate system is required. In passing it may be said that the system provided in the Pennsylvania act of 1915, which consists of dividing the State into a number of districts, each with one or more referees sitting as a court of first instance, with appeals to the board, has worked surprisingly well.

The system is substantially untouched in its fundamentals by a new procedure article passed at the last session of the legislature, by which somewhat greater powers were granted to the board, which was also given the right to assume original jurisdiction in many cases. Minor defects in the original acts were corrected, but substantially the system remains as it was. I can not but feel that where there is sufficient compensation business to warrant the appointment of a separate commission to pass upon compensation claims and agreements it is far better to have the commission independent of any other State activity. It may be, as in Pennsylvania, a bureau or branch of the department of labor. But I feel convinced that the adjudication of compensation cases should not be

merely one of the functions of a board charged with the administration of all laws relating to labor. Of course, this may be necessary in States where manufacturing and other similar industries are not great in extent and where, therefore, it would be wasteful to create a board at salaries sufficient to attract competent men merely to deal with the small number of compensation cases which would arise. But unless this is so the union of functions is apt to give rise to a certain amount of suspicion on the part of employers—a suspicion which in all probability is entirely unfounded, but which, nevertheless, is apt to exist. Employers as a class resent the intrusion into their affairs which is necessary for the proper enforcement of safety regulations and other labor laws. The board which administers these is apt to be regarded as partisan to labor, no matter how impartial their decisions may actually be.

In addition, in boards of this sort the compensation business is generally put in charge of one member, so that in appearance, at least, opinions are his rather than those of the board. Thus there is lost that interplay of minds viewing the case from slightly different angles, which is highly desirable in the decision of compensation cases.

The CHAIRMAN. Mr. Andrus, of Illinois, is the next on the program—"Is a uniform compensation act possible or desirable?"

Mr. ANDRUS. I would just like to say two or three words regarding several of the points that were brought out. We have no statute of limitations in Illinois. There is no time within which an applicant must file petition for adjustment of claims.

In regard to the case that was mentioned of a man who left two families, our act provides that in this case the compensation shall go to those whom he is under legal obligation to support, which, of course, would include both families, and we would be allowed to apportion it as we thought best.

The words "serious or willful misconduct" do not come in the Illinois act. We have never seen any evil come from their omission, and I have never heard of any agitation to restore them to the law.

When I became connected with workmen's compensation work, from my training as attorney I could not see any reason why we could not have a uniform compensation act. I knew, of course, as we all know, that a good many uniform acts had been adopted in different States—adopted in toto word for word, language for language—and I could not see why the same condition did not exist in regard to workmen's compensation acts. I asked of some members of the association at Boston two years ago, and they were of the same opinion, and I became interested in the subject, and I changed my mind.

## IS A UNIFORM COMPENSATION ACT POSSIBLE OR DESIRABLE?

BY CHARLES S. ANDRUS, CHAIRMAN ILLINOIS INDUSTRIAL COMMISSION.

The United States has 53 States, Territories, and possessions, each one having its own laws. These different laws vary widely in the different jurisdictions. In some cases a law of one jurisdiction has been enacted in its entirety in other jurisdictions. In some cases when a State was admitted into the Union, it has provided that all the laws of some other State shall be the laws of that State. This has been only a temporary expedient, however, and these laws have been changed as the local needs of the State or the desire of the people demanded.

That the laws of each State should be uniform in every particular no one has ever contended. Local conditions and divers ideas of the people in different States render this impossible and undesirable. That these widely different laws have produced great uncertainty and injustice in commercial affairs and have allowed the citizens of one State to escape the effect of their own laws by taking advantage of the different laws of other States is freely conceded. Thus we have a New Jersey corporation organized and doing business in Nevada, never having done business in New Jersey, and never expecting to do any business there. We find a couple legally married in one State and their marriage absolutely void in another—when traveling they have to look at a map to determine whether they are married or not.

The first known agitation for a law uniform in all the States was in 1886. In that year the Alabama State Bar Association sent out a circular to the bar associations of the different States suggesting a uniform negotiable instruments act. The following year the American Bar Association recommended such action, and from such beginning arose the agitation for uniform laws, which has progressed to such an extent that 50 of the 53 jurisdictions of the United States have adopted the uniform negotiable instruments act, and a large number of other uniform acts have been adopted in many States.

In 1892 there was organized a National Conference of Commissioners on Uniform State Laws. Since that year this conference has held annual meetings, lasting several days, during which there have been discussed and adopted 27 uniform laws. This association consists of members from every jurisdiction of the United States. Many of the States make appropriations for the expense of these delegates, for they receive no salary, and many of them pay their own

expenses. The proceedings of this conference are published in bound volumes and furnish valuable information to the student of uniform legislation.

There is probably no association in the United States that has accomplished so much that is so little known. The membership is composed of able men who are doing this work at a great sacrifice and accomplishing valuable results. Their only weakness appears to be their lack of a good press agent.

Through the work and efforts of these commissioners, the uniform negotiable instruments act—as already noted—has been adopted in 50 jurisdictions of the United States, and other uniform acts as follows: Warehouse receipts act, in 41; bills of lading act, in 22; stock transfer act, in 14; the family desertion act, in 11; the partnership act in 8; the domestic acknowledgments act, in 8; and several other acts in a lesser number of jurisdictions.

Illinois and Pennsylvania have adopted all the uniform commercial acts. In 1917 Illinois adopted six of the uniform acts.

A committee was appointed on the reporting and prevention of occupational diseases and industrial accidents, but it reported in 1916 that it was not expedient to frame a uniform act on this subject. A uniform act on compensation for occupational diseases was framed in 1916. This was designed to be an addition to the workmen's compensation act. As far as known, no State has adopted this act.

After several years of investigation, in 1914 this conference adopted a uniform workmen's compensation act. In the proceedings of 1917 the statement was made that this act had been adopted in Oregon and Indiana, and, with slight modifications, in Minnesota and Idaho, and that it was examined in other States and had an influence in shaping legislation on this subject. Letters from these States indicate that this statement is not true, except that in Idaho the uniform act was adopted with slight modifications. P. Tecumseh Sherman, a New York attorney, who is considered an authority on compensation acts, writes that the statement above is not accurate, but that the uniform act was followed with modifications in Idaho, Vermont, and Hawaii.

In addition to the uniform act adopted by the commissioners on uniform State laws, uniform or model acts have been adopted or recommended by various other organizations. The National Civic Federation circulated three drafts of bills as guides for uniform State legislation on workmen's compensation—the first in the year 1911 and the last in 1915. The American Association for Labor Legislation has issued "Workmen's compensation standards" which has been distributed in large numbers and sent to governors and workmen's compensation commissions. This association drafted a workmen's compensation bill which was enacted in North Dakota

last year. Other organizations have adopted or prepared for adoption uniform or model acts. These acts are all different, and such a multiplicity of models and standards does not suggest the immediate acceptance of a uniform law.

P. Tecumseh Sherman, already referred to, writes :

In my opinion we are now going through a period of experimentation during which it is hopeless to effect any substantial uniformity. I think experience demonstrates that the uniform act is in many ways imperfect, and that if it were redrawn now in the light of such experience it would be modified in many particulars. \* \* \* The adjustment of the scale has been treated too much as a political, economic question to be adjusted by bargaining between the employers and employees, instead of as a question of law and social policy.

It will be seen from the above that very little success has been attained in this country in securing uniform compensation acts. Every association that considers this subject seems to think a uniform act is desirable, but that this act should be the act of their own association and not some other uniform act. The labor consumed in preparing these acts has been far from wasted, as they have served as models and many provisions have been taken from the different proposed acts.

In considering model acts, the one prepared by Dr. Royal Meeker last year should not be lost sight of. Probably Dr. Meeker has more extensive acquaintance with the actual workings of the compensation acts than any other authority. It has been amply demonstrated that a provision theoretically correct has been found unworkable in practice.

Usually the first objection raised to a uniform act is that the scale of compensation can not be made the same in the different States. It may be conceded that a State that has an adequate scale would not wish to reduce it to make it uniform with some other State where such scale could not be adopted. It is interesting to note that the uniform act above referred to did not have such a scale but left this provision blank. If this were the only objection to a uniform act, it could easily be remedied in this manner, as a precise scale of compensation is not indispensable to a uniform act.

Do the same arguments that apply to the desirability of uniform legislation in other subjects apply to workmen's compensation laws? In several particulars the situation is not the same, and I shall briefly refer to these conditions.

In the first place, workmen's compensation legislation is in a formative period. Nearly every State that has such legislation amends its law at each session of the legislature. In most, if not all, of these cases the law is improved by such amendments. It is hoped that few States will do as one State has proposed to do—make their

compensation law a part of the constitution, so that it can not be changed without a vote of the people.

These changes are made desirable for two principal reasons—the previous legislation has been found to be unsatisfactory and not to have secured the results the framers of such legislation contemplated, or such legislation could not be enacted when the prior law was passed, though even at that time deemed desirable by those best qualified to pass on that subject.

As an illustration of the first reason I shall cite a provision of the Illinois law of 1913, when the industrial commission was created. The scheme of the law was that the industrial commission should have arbitrators who would hear the cases in the first instance. Either party aggrieved by such decision should have the right to have such decision heard on review by the commission.

The law provided that each party should appoint an arbitrator and these two arbitrators would sit with the arbitrator of the commission in deciding the case. It was found by experience that the arbitrators appointed by the parties were in practically all cases partisans of the party who appointed them, and nearly always gave their vote in the decision for such party. This system caused expense to the parties, delay in the trial of cases, and made necessary a decision *eo instante*, when perhaps the case should have been taken under advisement. It may be interesting in passing to note that the uniform act adopted by the commission on uniform State laws had this same provision. I am not criticizing the other States that have this system, nor am I saying that such States have had experiences similar to ours; I am only saying what our experience was in Illinois. As a result of this experience, two jobs were abolished, two positions were decreed *functus officio*, and now these cases are heard by one arbitrator. This system works well and no one wishes to return to the old system.

As an illustration of the second reason I shall cite the experience of Illinois in enacting a compulsory law in place of a so-called elective act—the elective act that said to the employer: “This act is purely elective. We don’t want you to accept it except of your own free will, but if you don’t accept it we will take your common-law defenses away from you.” Such an act is as elective as the election of a pedestrian to contribute money to the footpad who says, “Your money or your life.” The degree may be different; the principle is the same. When the first compensation act was enacted in Illinois in 1911 it would have been impossible to pass a compulsory act, even if such legislation had been at that time considered constitutional. In 1917 a compulsory act applying to hazardous occu-

pations was enacted by the legislature, and in no case has the constitutionality of the act been questioned.

It is true that compensation laws are more stabilized now than they were six or even two years ago. It is not true that any State has a perfect act at the present time, nor have I ever heard any member of this association state that the legislation in his State had arrived at perfection.

I consider it very fortunate that at the outset the laws in the several States were so radically different. In the experimental stage we thus secured valuable experience that would have been impossible had the laws in each State been uniform. I think, however, that we have passed through that stage and that we ought now to be able to agree on the essential features of such a law.

I do not mean by this that if we could agree on such a law we should all return to our respective States and fight for its enactment. We must make haste slowly—not because that is our favorite gait, but because we must. If the framers of the early compensation acts had included farm laborers, very few of them would have been passed, not because it was not believed that such labor was not hazardous, but because there would have been enough votes in the legislature to defeat a bill containing such a provision.

Compensation laws are such a radical departure from the common law, popularly denominated “the summit of human wisdom,” that each new stage encounters opposition, and the combined opposition might be enough to wreck any measure that contained all the provisions we should like to see there.

I am speaking of a uniform act to be introduced into legislatures, not a uniform act to be agreed on as an ideal toward which we should all strive. That is something to which, in my opinion, we should give our earnest attention. I believe we can agree on the fundamentals of such a law and that, having come to such an agreement, we should all strive to have its provisions enacted into laws as speedily as possible, not attempting to obtain that which we know is impossible, but obtaining as much as we can as soon as we can. I do not propose to discuss what such a law should contain; that is a subject within itself and is not within the purview of the present paper.

It should be borne in mind that in most of the uniform acts proposed, there was no question but that there should be legislation covering such subject; the only question was, What should such legislation contain? In workmen's compensation legislation we have not yet arrived at this point, as there are yet in the United States seven States that have no such legislation and four States have enacted such laws only during the last year—Virginia, Missouri, Tennessee, and North Dakota.

One of the principal reasons given for the enactment of uniform laws is that confusion and injustice, especially in commercial affairs, exist because the laws are different in the different States and because citizens of one State often escape the effect of their own laws by taking advantage of the different laws of some other State. The last reason does not apply to compensation legislation, as neither the employer nor employee can (with one slight exception) escape the operation of the law in his own State by taking advantage of the law of another State. On the first point some of the arguments will apply to compensation legislation, though not to such a degree as in commercial affairs.

Some employers and most of the insurance companies do business in more than one State. A uniform act with some degree of uniformity of judicial decisions in respect thereto would be an advantage to them. Statistics would be of more value and rate making would be an easier task. So on this account we must conclude that a uniform act would be of some advantage, though even here not so badly needed as uniform laws on other subjects, particularly in dealing with commercial matters.

The argument in favor of uniformity—that we should agree on the best laws and use our efforts to have them enacted—applies with even greater force to compensation legislation than to almost any other subject, as there is probably greater diversity in such legislation than in the legislation along other lines.

I fear many of us are too optimistic in regard to our compensation laws. We compare results with the results obtained by the common-law personal injury suit, and because they compare favorably we imagine we have perfect laws and perfect administration of these laws. I would advise all who have not already done so to read Dr. Royal Meeker's paper on "Lacks in workmen's compensation," read at Richmond in December, 1918. Dr. Meeker did not in that paper state all the "lacks," but enough to convince the optimistic commissioner who thinks that his State has a perfect act, and, of course, perfect administration of that act, of the wisdom of revising his decision.

My conclusion is that the adoption of a uniform workmen's compensation act is neither possible nor desirable; that it is impossible of attainment, and that if it were possible and adopted to-day, it would be so amended in the next few years that it would be unrecognizable. I do believe, however, that we should agree on the essential features of such a law and strive to have these features enacted into laws as soon as public sentiment in our own State will allow us to do so.

## DISCUSSION.

The CHAIRMAN. Now, gentlemen, one of the criticisms that has been suggested more or less at previous conventions is that there has not been sufficient time allowed for discussion. We hope at this convention that criticism will not be warranted. One of the most valuable features of these conventions is the criticism and the discussion which is developed as a result of the papers that are presented, and I hope the members present will feel perfectly free to raise any question for discussion which is appropriate to the papers. We will now throw the meeting open until 12 o'clock, and longer if necessary.

As chairman, may I be pardoned for saying a word? In Mr. Bohlen's paper he raises a criticism of that type of law which gives to the children of the dependent widow by her deceased husband the benefits of the act, if I understand him rightly.

Mr. BOHLEN. I raise this point, that when there are any children by a first wife, under the average act in force in America, the payment is made to the widow who is the stepmother of the child, and who often is not caring for the child; therefore she gets an additional sum which she uses for herself and her own children, and the stepchild goes without really receiving any of the compensation. My point was that provision should be made whereby the amount which is paid on account of the stepchild should be able to be dissevered from that paid to the widow and paid to the person in charge of the stepchild.

The CHAIRMAN. The point I have in mind—perhaps I did not catch your point clearly—the point I have in mind is that the essence of the situation is the dependency of the child. I do not care whether the child was an adopted child or any other kind of child, so long as the child was dependent on the assistance.

Mr. BOHLEN. That is quite correct. Until this amendment was passed we had quite a number of cases where there would be a widower recently married again, and would have three or four children who were farmed out amongst relatives or in charity institutions. He would be providing something toward their support; he would die; the new widow would get all the compensation.

The CHAIRMAN. Your suggestion is that the board should have jurisdiction to consider the question of actual dependency?

Mr. BOHLEN. Yes. We have a short provision in that particular which we put in the new act which provided that in such case the board might order the amount payable on account of any child to be paid to some person other than the widow.

Mr. DUFFY. Another point in Mr. Bohlen's paper that I would like to hear discussed a little is this: A reference was made to the Ohio law as being one of the laws that did not follow the wording of the

English statute in using the phrase "arising out of the employment." However, the supreme court of our State rendered a decision practically reading that phrase into our law. But notwithstanding that, the decision of the court itself, and the policy of the commission even since that time, has been very broad, and I want to illustrate by taking two cases. The case that brought on the criticism, and perhaps was in the mind of the members of the supreme court when they made the decision, was this: A stenographer was employed by a firm in Cincinnati. While sitting at her desk one day a man walks in and shoots her. She dies as a result. The mother made application for compensation and an award of compensation was made. It developed that this man was infatuated with the girl and she had rejected him.

We have another case in which a man driving a wagonload of baskets over a country road—and this happened since the supreme court decision—they found him dead; had fallen from the wagon. He was driving close to a woods where it was customary for hunters to go after game. The evidence would indicate that he had been killed by a stray shot from some hunter in the woods. An award of compensation was made in that case and no criticism. It seemed to be the consensus of opinion that that was a reasonable and just decision.

The point I am getting at is this: Would Mr. Bohlen's interpretation of that phrase mean that in a case such as first cited, where this girl was shot in the course of her employment by this man, infatuated with her, where the employer was in no way responsible—where the cause of it was due to conditions outside of the employment—whether or not his idea would be that compensation should be allowed in a case of the kind?

Mr. BOHLEN. We have provided in our Pennsylvania act—perhaps I am prejudiced in favor of that; we have been administering it—the following:

The term "injury by an accident in the course of his employment," as used in this article, shall not include an injury caused by an act of a third person intended to injure the employee because of reasons personal to him, and not directed against him as an employee or because of his employment.

That would directly exclude those accidents where, the motive being personal, the place of the harm done to the man is merely accidental. He would probably have been killed elsewhere. His enemy happens to find him at work and kills him. His injury, therefore, has no real relation to his employment. In the other case the injury was a fortuitous one; it would not have occurred then, only that the man was driving past a woods in the course of his employment.

Mr. DUFFY. That is a satisfactory explanation. Here is another case.

The CHAIRMAN. Before you state your other case I am not sure whether you stated in the first case you cited whether there was a motive in connection with the shooting of the girl?

Mr. DUFFY. Yes; this man was infatuated with her. He had proposed marriage to her and she rejected him.

Here is another type of case we have a few of. I will cite one I have in mind; I can not recall the names. A foreman is in charge of a gang of men constructing a building and he discharges one of those men. At the time the man accepts his discharge and no trouble of any kind takes place. That evening this discharged workman goes to the home of the foreman and they have a quarrel, which results in the foreman being killed. We had a case of that kind, in which we reasoned out that it was due to the exercise of that foreman's authority over the men, and that the act which brought on the violence that resulted in his death was an act incident to his employment; and even though the act which caused the injury and the death occurred away from the employment, apparently at a time when neither was in the course of employment, yet our commission decided in favor of allowing compensation. I would like to hear what some of you think of that.

Mr. BOHLEN. Good judgment, but bad law.

Mr. ANDRUS. I understand that Mr. Duffy's question is, How do the courts in States which have the expression "arising out of and in course of their employment" interpret the law in a case of that kind? We have had special decisions of that kind in Illinois, the first one being a watchman in a bank, who was shot. They did not know how he was shot. The reasonable inference was that he was shot because he was watching the property, and the supreme court said that if he was shot because he was watching the property he was shot as a watchman—it arose out of his employment. If he had been shot because of some private quarrel that had no connection whatever with his employment it would be a mere coincidence that he happened to be shot there; and in all cases they have laid down the test that if the assault arises in connection with the work that it is compensable and comes within the law; if it does not, why it is not. The supreme court of Illinois would say in that case that it is not a compensable case because it did not arise from her employment.

Dr. MOWELL. I think two years ago this same question came up, and the two cases that were cited by the gentleman here come clearly under the Washington act, and it depends entirely, to my mind, upon the wording of the act. The act reading "accident during the employment," and the other reading, "accidents arising out of the employment," are quite different. The compensation act in the State of Washington would compensate the girl that was shot by her lover if she was actually at work. That has been through the

supreme court. It would also compensate the man that was shot by a hunter accidentally, if he was working, because it is during his employment. It makes no difference what happens to him in the State of Washington if he is working. Some of the acts, I will admit, say "arising out of the occupation." Of course, that would exclude, because neither one of those would be due to the occupation that the individual was following.

The commission in Washington first took the stand, and it went through the courts in a case like this: There was a logging industry there and they had discharged a man because he was always in a quarrel with some of the men around the works, and he goes down home and gets his Winchester and comes back up along the logging road and intended to kill the foreman and the owner of the plant. They did not happen to come down on the logs, but there were a number of men there and he killed three of them as the train passed by—picked them off. Well, the commission turned that claim down, was content to let it go through the courts, and the supreme court of the State of Washington decided that this comes under the act.

Dr. KLOEBER. Dr. Mowell did not state all of our law. In the case of the man who was on that wagon and was shot by supposedly a hunter, under the law of the State of Washington, could it have been ascertained who fired that shot the dependents of the party who was killed would have had good cause at common law against the man who had fired the shot, the third party, without invalidating his claim against the compensation board or the industrial insurance committee, if the measure of award which he had received at the hands of the court had not been equal to that which he would have received from the State industrial insurance committee. In other words, the laws of the State of Washington give the injured man redress against the third party or the contributing cause to the accident if, in the judgment of the injured man or his dependents, they desire to take that action. I think that this is an admirable adjunct to any compensation law. It relieves the owner of the establishment of liability where the liability is contributed to directly by a third party.

The CHAIRMAN. Is your commission subrogated to the rights of the party against that third party in the event you can ascertain who did the damage?

Dr. KLOEBER. Not the commission, but the party can take—

The CHAIRMAN. Supposing you pay \$1,000 to somebody, the contributing cause being a third party, have you a principle of subrogation in your law?

Dr. KLOEBER. Absolutely.

Mr. CRAWFORD. We are, unfortunately, one of the States having a compensation law that, in my judgment, is one only in title, and

trust to the courts to take care of it. We have no compensation board; we have no method of making settlement, only as they agree among themselves. I had it called to my attention the day before I left there, and they asked me to get what information I could. I may say the governor has appointed a commission this year to draft a bill to present to the legislature. For instance, our law says if a man loses his arm he shall be compensated at the rate of not to exceed \$12 a week for 210 weeks. If I figured correctly, that is about \$2,500. This man still has one arm. The people for whom he was working report that it is a 50 per cent impairment. The insurance company carrying the risk offered him about \$400, with the doctor and hospital bill. He was up at my office and asked about it, and as near as I could figure on the proposition of 50 per cent the proposition was about half of the amount he was allowed. The question he wanted to know was, was there anyone here who had a law governing cases of that kind if it ever went to the court, and what the court decision was.

Mr. MARSHALL. The Oregon compensation law has substantially the same provision as was outlined by Dr. Kloeber. It states that where the workman is injured away from the plant of the employer by a third party, then it is subrogated to the commission if he takes compensation. If he receives a smaller amount as a result of litigation than he would under the compensation act, the State fund is required to make up the difference. I simply want to ask this question. We found no decisions which defined the phrase "plant of the employer." Whether or not an injury occurs in construction work or any other work which takes a man to different places, whether that would be regarded as constituting plant of the employer? We have had no great difficulty so far. It is a nice question whether the plant of the employer is simply a factory building or other line of work if it be a place where workmen are employed.

Mr. WILCOX. I am disposed to agree with the gentleman from Pennsylvania that the question of whether or not there is any limitation of the coverage of the benefits of the act with respect to whether a man is performing the services at the time or in respect to whether the accident grows out of the industry does not mean very much. The question of the cost is not important one way or another; and if there were no limitations in the laws, that then we might expect to escape some litigation. I take issue with any provision that pays benefits where the industry is not directly or incidentally the cause of the man's injury. I take issue with it on principle. The industry employing this girl who was shot by a jilted lover ought not to be required to pay compensation. I do not care if she is working in the particular plant. There are limits to the things that are decent and right, and we have troubles enough in getting legislatures to see

the things that are decent and necessary in order to build up these compensation laws without running to the granting of benefits to these people whose injuries had no connection whatever with that industry except the person happened to be on the premises at that particular time. We have had to meet those questions and we have to keep on. Compensation boards ought not to fly from the obligation to determine these questions simply because it causes trouble and litigation. I think laws ought not to undertake to carry benefits to these people whose injury came in no way in connection with the industry.

The Wisconsin act provides that compensation comes to all people who are injured accidentally, and now it has been extended to all injuries that grow out of or are incidental to the employment. It also carries the liability for those accidents that occur while the employee is going to or off his work on the premises in the ordinary way. Of course, it provides under a previous act the other provisions I suggested of people who are out as street workers and subject to street hazards. A man who is going about delivering is in the course of his employment and, of course, is covered. As to the cases cited by Chairman Duffy—the girl that was shot at her typewriter—to my mind no law ought to compensate. If the man who was killed by the hunter is put at work in a locality where that is a hazard of that particular industry; yes.

We have cases of the party who rushes in to save the employer's premises from burning. We had a case recently in our State where an employee went into a confectionery store to rescue some kind of receptacles they keep ice cream in. He went in there to take them out; probably in the interests of his employer. I do not think there is liability in those cases unless the property of his employer is endangered by it. I think a man may rescue his employer's property; he may do the things that are reasonably necessary to protect his employer's business. It is one of the things that industry cultivates in the man to be looking out for things to benefit the employer, and when he assumes the obligation of protecting his employer's property then he should get the compensation if he is injured meanwhile. But when he goes out of the way, then I do not think he performs service that is incidental or otherwise connected with his employment.

Mr. FRENCH. The California commission for some time had the subject under discussion as presented by Mr. Wilcox, and we have the provision in the law "arising out of," and we fundamentally agree with Mr. Wilcox, but we do not agree with our supreme court, because our supreme court has defined that provision so closely that there have been men and women excluded from compensation in California that ought to have received compensation. If we could

get the liberal, the fair, decision from the supreme court we would be in a much better position, I think, to adhere to the view expressed by Mr. Wilcox, although I think, as he states, it is fundamentally right that if the industry has no connection with the accident the industry should not be charged.

I would like to digress just a minute to the statement made by Mr. Bohlen regarding dependency. We found in California no difficulty with that question, because the law explicitly states that the commission can take into consideration the degree of dependency. It is not a matter who is left dependent; we can decide under the act the degree. For instance, in a recent decision we gave the widow less than the old mother because the killed man was supporting both, and the old mother was along toward 70 years of age, and the widow left was a young woman well able to resume her former occupation of stenographer.

Taking up the excellent paper read by Mr. Andrus it occurred to me that his main idea was entirely right—that instead of advocating a uniform law under compensation, that we should strike out for some of the essentials that I think we all believe in. For instance, unlimited hospital and medical care, etc. Rather have what we might call minimum standards exactly as some of our safety laws have certain standards, and the employer can go beyond those standards if he so desires, and in that way I think we will advance much further for the time being than if we endeavored to correlate all these laws and to have some uniform law presented to each legislature. I firmly agree with Mr. Andrus that that is a good plan at this time.

MR. CLARK. In regard to the question which Mr. Crawford asked, I do not know of any court decision, but there are provisions in a number of the laws that the loss of an arm shall be considered as equivalent to the loss of a member. If the right arm is 50 per cent disabled, of course the compensation should be based on the schedule as to the loss of the arm.

As to the question of plant, I remember a decision in which a man had gone out from the plant a little ways, I think, to provide for the water supply of the plant, and that was considered a different place from the plant of the employer. I do not believe that was right. He was exposed to the hazard of the place which was the place of his employment, but the court limited the plant to the actual establishment in which the main work was done.

Now, no one has taken up my favorite horrible example on the subject "arising out of the course of employment," and it illustrates what Dr. Meeker said in his paper about putting the administration in the hands of the court. It comes in line with what Mr. French

has said about the California Supreme Court. It arose in Michigan. A Croatian had to use, as part of his work, a moving crane. The crane got out of order, and he asked a German machinist to repair it for him. The German could not speak Croatian, and the Croatian could not speak German, and neither one of them spoke good English, so that they did not get together very well, and the German could not find out where the trouble was. The Croatian undertook to show him—pointing out the place of the difficulty. In getting either on or off, the crane cut off two or three or four of his fingers. The compensation commission, very properly, as I thought, awarded the man compensation as though injured in the course of his employment and, I should say, arising out of it. But the supreme court said that it was none of the Croatian molder's business to repair the machine, and he had no business on the machine, because that was not where he worked. There was a strong dissenting minority opinion that he was attempting to further his employer's interests and was entitled to compensation. But the supreme court decision stands to-day depriving that man of any benefits whatever under the compensation law of the State.

I think that the Michigan Supreme Court probably holds the banner in regard to that kind of hard construction. I was glad to hear what Mr. Bohlen said on the subject of "arising out of employment." I drafted a bill once and left it out, and I was made to feel so very lonesome that I put it back in. Now I am going to go back and strike it out, because I think Mr. Bohlen is right on that point, especially as such hard construction is left possible in regard to what is meant by "arising out of employment."

Then, in regard to dowry, I think it an inducement—that was the idea I always had in mind—two years' benefits was proposed as an inducement to get the widow off the fund. It was an act of economy. Whether it has that effect on the mind of the suitors of the widow, I don't know.

The limitation of a year, perhaps, allowed to expire under misrepresentation furnishes some hardships; but here is another hardship that I have come across that is more perplexing: A man is injured—I remember a case where a man had a blow on the head. He went back to work after a little while, having received some slight medical benefit. Within 8 or 10 months an abscess developed at the seat of the injury and he became seriously disabled and called for a serious operation, but having received medical benefits at one time, and, perhaps, some compensation, he was held to have exhausted all his rights under law.

Mr. KENNARD. This question, "arising out of," is one that is very interesting, particularly because it has probably given rise to more litigation that has gone to the Supreme Court of Massachusetts than

any other. But when you start to strike it out of an act, as has been suggested by the gentleman from Pennsylvania, I agree with Mr. Wilcox's remarks.

In Massachusetts our cases are impossible to reconcile, as I view them. We have a case where a night watchman, supposed to stay in the building, went out in the yard and there was killed by somebody, and the supreme court said he was not entitled to compensation because he had gone outside the place of his duty.

We have the case of a man who was a head waiter; he discharged one of his waiters and was shot by this waiter; and they said it arose out of his employment, because it is one of those things not foreseeable, because it does not have to be foreseeable under our laws.

We have the case of a commercial traveler who was run over while walking across the street in the pursuit of his duty; it was held that the injury did not arise out of his employment. It was very interesting that the decision was based upon an English case. Practically all authorities cited were English authorities. It is also very interesting that since Massachusetts decided that case—probably some of you gentlemen will know the case, the case of the English House of Lords, in which the judges reversed most of the earlier decisions of the court, not all of them; and among other they cited by way of example the case of a commercial traveler who would be run down, that that would be arising out of the employment, although the Massachusetts Supreme Court arrived at a directly opposite result.

So the question of whether we will ever be able to find out what the words "arising out of" mean seems somewhat problematical. I imagine we could discuss the question of "arising out of" for a week and we would be just where the Supreme Court of Massachusetts is to-day—entirely in the air. It seems to me striking the words out is fundamental. The fundamental proposition at present is compensation for injuries to be borne by industry, and therefore should have industry involved somewhere in it.

Mr. BOHLEN. It seems to me like following a specter ship in a fog. The court itself seems to be foggy and uncertain for us to follow. Like following a fog whistle in a heavy fog—you think it is over there, and it is over here.

I want to say, in view of some of the statements in regard to other courts—I want to pay my respects to the Supreme Court of Pennsylvania in this respect, that of all courts whose decisions I have read the Pennsylvania Supreme Court have taken possibly the broadest attitude toward compensation that any court has taken. I know the compensation board considered rather tremblingly whether they

would go to a certain point, and then were taken to task that they had not gone further. I think that is rather a unique experience in the relation between a court and a commission.

In respect to "arising out of employment" I do not for a moment contend that the accident should not have any relation to the employment. What I do contend for is the meaning which was put at least prior to this decision in England, which has been largely followed in America—that an accident must be due to some special reason which can be recognized as peculiar to the particular form of work. Occasional allowances will be made for the good employee who tries to save the master's goods or chattels, as a reward for fidelity. That idea that the risk must be one that in advance is capable of being foreseen, or is inherent in the industry, has no place in compensation law and has led to a variety of conflicting opinions which the commission has difficulty in following.

Mr. WILCOX. What are you going to do? You see there must be a causal connection between the industry and the accident. Are not you right in this same mess?

Mr. BOHLEN. It is a much simpler proposition—a man is at work and is injured while at work because of the nature of the thing he is doing, where that thing—

Mr. WILCOX. That is, growing out of or incidental to the employment?

Mr. BOHLEN. If you interpret "growing out of" as meaning caused by; but for the employment, that the man would not be injured, that is the test.

Mr. WILCOX. Incidental, would you say?

Mr. BOHLEN. But, again, for the employment the injury would not occur. I drive along a wood; I am sent to drive along a wood where it is known people are hunting. I would not go along that wood but for my employment. That risk is one that is foreseeable; therefore if I am injured in that way my injury is foreseeable. I go along a wood where hunters are not, but happen to be shot. In each case I would not be shot but for the place I am sent to. It is exactly the same proposition as the frostbite case. There the man went out with a delivery wagon, we would call it here, and was frostbitten while making change at the door, and the court there held he was not entitled to compensation, because the risk was not peculiar to his employment. Now, all of that, I think, can be eliminated. As far as practical difficulties go we have eliminated that in Pennsylvania. We have made it the test, only that an accident should occur in the course of employment, and we have defined this to include any act done in furtherance of the master's work. We have had very little dispute. The adjustments and agreements are made without many questions arising. And, remember, that for every case litigated there are dozens and

hundreds of cases that are settled, the speedy settlement of which is helped by these very doubts and questions.

Mr. KENNARD. I would like to ask the last speaker to elaborate a little on the stenographer's case, whether you say that case is because she would not have been shot being where she was. The reason she was a stenographer she wanted the money, and she was shot as a stenographer.

Mr. BOHLEN. We would anticipate such questions and also guard against such unusual conditions by explicitly providing that there shall be no compensation due where the injury is caused by an act intended to injure a person having no relation to the business.

Mr. WILCOX. I think the great bulk of our trouble in court constructions has come out of the use of words, "in the course of employment"—"What was the man hired for?"—whether or not it had any causal connection with the industry. I think that is where the bulk of our trouble has come.

I agree with this gentleman here who criticised the Michigan court. I think it is the blackest page in all compensation history in this country, and it all turned there on whether this particular man was hired for the job of going up and showing the millwright what was out of order with the machine. There the Michigan court hung on to the words "course of employment"—said it meant the exact employment.

Dr. MOWELL. I would like to ask this gentleman whether I understood him aright about his frostbite case. Do you determine because that man was a delivery man, and he happened to be collecting at the door, that that was the reason he was not compensated?

Mr. BOHLEN. I am not giving any reason; I am giving the decision, I think, of the English House of Lords in the case of Warner *v.* Couchman, in which the court held that inasmuch as the risk to which he was subjected was no greater than that of any other person who had to be about on the streets on that day, therefore the risk was not one peculiar to his industry, and therefore the accident did not arise out of his employment.

Mr. DUFFY. There is no supreme court decision in Ohio on the subject of the loss of use of a member; but we have a common pleas decision on the point, which is cited, where a man lost 50 per cent of vision. When our commission first started administering the law we decided a number of cases in which we allowed a fractional part of lack of vision. For instance, loss of an eye was 100 weeks; for 25 per cent we allowed 25 weeks. Finally we had a case in which the commission denied any compensation—what we refer to in our State as the famous gonorrhoea case. The workman, who was a teamster, claimed to have gotten the injury to his eye by a horse switching his tail and striking him in the eye. Nothing serious developed at the

time, but several weeks later he had a bad eye, went to the doctor, and the doctor found gonorrhoeal infection. The man claimed that the gonorrhoea germ was on the tail of the horse. Well, that did not satisfy the members of the industrial commission and the claim was rejected. The claim went to the court on appeal, and in that decision the commission was reversed, and, mind you, there was a claim made for only 50 per cent loss of vision, but the court allowed for entire loss on the theory that the law provided only for loss of eye, and it must be either all or nothing. Now, then, you will see the reason for the decision when I point out to you that our law at that time provided for fractional loss of hand, arm, or leg, but (it was an apparent omission) it did not make such provision for fractional loss of eye. Now, our commission followed that decision after that, and we were compelled to turn down cases where there was 50 per cent loss of vision, etc., until such time as that was amended by statute, which it is now, providing that we may measure the fractional loss and pay accordingly.

My opinion is this—I know some lawyers here will not agree with me—but I have taken this position from the start. I am not in favor of following these decisions of the courts except where it is a decision of the supreme court of the State or the United States, or, of course, in the Dominion of Canada, their supreme court, for the reason, as brought out here, that they are continually reversing decisions; and my experience of eight years in helping to administer the Ohio State law is that in almost every case where we have gone wrong, and it seemed to me we did not do justice, was due to trying to follow a precedent laid down by some court. Personally, I never have, and never will, follow them. Now, then, what I am about to suggest is this: Why can not these industrial commissions who know the circumstances in these cases much better than any judge knows—and I am not reflecting upon the judge, because his environment has not been such that he could get posted—but on these commissions we have men who are supposed to know about these conditions. Instead of following these court decisions, particularly inferior courts, why should not we decide ourselves? We know what justice is in a particular case. We can give a good reason why, and I say that is sufficient, and I do not care what any court has decided. If you are doing justice and give a reasonable and a fair reason for it, that is what we should do. I recognize, of course, where the supreme court decides that such and such a thing is the law, we are obligated to follow it; but I certainly do say that we ought to get away from this hidebound custom of following precedent of common pleas courts or even of courts of appeal. We had a learned judge of our supreme court who advocated what he called a new principle, and that was that there be no precedent, and he appealed to the supreme court of

our State to decide a case according to the facts and as justice would warrant, and laid emphasis on the fact that so much injustice had been done from the practice of his profession in following precedent.

Mr. WAGAMAN. I have listened with interest to the discussion of this proposition to strike out from the law the words "arising out of." I want to suggest that we are treading, in my mind, upon somewhat dangerous ground when we undertake to strike too much out of the law. The difficulties that have arisen, it occurs to me, have not been so much because of the principle embodied in the law as because of the application of the principle.

The Maryland law compensates only such cases as arise out of—as are the result of accidental injury which arise out of and in the course of the employment. There is sometimes a suggestion to strike out the word accident. In some laws you do not find the word "accident." That involves a principle which is to guide commissions in determining a case. We must apply the principle in the determination of these cases. Now, the proposition is to strike out the phrase "arising out of," which embodies a principle. We know what the principle is, generally speaking. The trouble is not generally so much in knowing what the principle is that is embodied in that language as in the application of the facts of the particular case—whether it fits the law as required. And the objection is now also suggested—with all due deference to Mr. Wilcox—that perhaps there is some difficulty in the words "in the course of the employment." It occurs to me that Mr. Bohlen's position is not out of accord with those who would not strike out the words. He says the principle is to be the guide, but would strike out the language. It strikes me there is a tendency to strike too much out of the law. We all want to be guided by the principles which are embodied in the words "arising out of." I think it is much better to have the language of the law clear, so as to assist us in the determination of what the principles are to be applied, than it is to strike it out and let us go foot-loose and fancy free.

The CHAIRMAN. I was going to say that I think we had better cut off this discussion here, because the afternoon program is exactly along the line of the discussion we have had this morning. We have a little business program to put over before adjournment.

Perhaps before doing that, I may just say we have with us the president of the board of trade, Mr. Dunstan, and while Dr. Meeker is getting his report ready to present, Mr. Dunstan, will you extend a word of welcome on behalf of the board of trade to the delegates?

Mr. DUNSTAN. I am taking advantage of your general invitation to drop in at any of your meetings. I came over for a moment this morning, and I am very glad, indeed, to have the opportunity of addressing you on behalf of the board of trade. Just let me say that

the board of trade in Canada is the same as chamber of commerce in the United States. On behalf of the Toronto Board of Trade I do extend to you all a very, very hearty welcome. I think I should say the same for all the people of the city of Toronto. Let me also say to you that we would be very happy, indeed, to extend to you the privileges of the board of trade during your stay in Toronto. We have a luncheon club; our room is fairly crowded; we are spending about \$10,000 at the present moment in extending our premises; but there will be ample room for everybody, and we will be delighted to see you. I would also urge as many as possible should go to the board of trade over at the corner of King and Yonge, and whether you go to lunch or whether you do not, to go out on the balcony of the twentieth story of the highest building in Toronto and you will get a bird's-eye view of the city that you can not get from any other building. Therefore, sir, I trust as many of your delegates as possible will do us the honor of paying us a visit, and I can assure you that you will be abundantly welcome.

Let me congratulate you, sir, on having got down to business so rapidly. I was very much impressed with the seriousness of the discussion. Let me also say in my own particular business I receive every morning a four-page leaflet giving decisions of the courts of the United States on all matters which affect, directly or indirectly, my own line of business; and I have always been somewhat interested in noticing that each leaflet usually contains one or two decisions with regard to workmen's compensation acts upon the very points which you have been discussing this morning. I happened to see a case that made me think of how difficult it must be for you to decide the various local questions, and so I took about a dozen words at random and got my stenographer to strike off two typical illustrations—perhaps hardly with the idea of mentioning them to you, but as they are so apropos to what you have been discussing, you will pardon me if I just read this:

That the act of reaching into a card-cutting machine in an attempt to remove a piece of obstruction, the same was not willful misconduct.

A person shot by fellow employee while both were engaged in work on the premises of the employer could not recover, as the injury grew out of personal grievance and not out of the employment.

That an employee injured while attempting to prevent a child being run over on the company's premises was injured in the course of his employment.

The discussion on what arose out of the employment was very interesting to me.

That a woman who in good faith was living with an employee as his lawful wife was entitled to recover as a dependent.

The widow received an award when an employee died as result of coming in contact with poison ivy while employed in cutting weeds.

I could have made a list as long as to-day and to-morrow, but it has been to me always a matter of interest the number of cases that come before the courts in the United States. I think everybody must agree with the principles underlying workmen's compensation; there may be differences of opinion as to the structure that is being reared.

The whole matter is one of great interest to all employers, and, therefore, members of the board of trade are naturally deeply interested, and I feel sure from the discussion I have heard that the sane judgment of a gathering like this will do very much to insure a wise and reasonable application of the principles.

### BUSINESS SESSION.

The CHAIRMAN. Dr. Meeker, have you your report ready?

Dr. MEEKER. The financial statement was made up, as usual, by my secretary. I had not sufficient time to examine it closely and I submit it, then, rather blindly and with the fear that the balance on the balance sheet does not correspond with the balance in the bank book.

The question of dues is a thing that should be given serious consideration at this time. Before I refer the question of dues to you I should speak of the investment of \$700 of the funds of the association which I made in the fourth Liberty loan. The executive committee sanctioned the investment. I wanted to make the investment because we needed to secure the money for the Liberty loan, and, secondly, I could secure a higher rate of interest ( $4\frac{1}{2}$  per cent) from the bonds than could be obtained from any savings bank; and, furthermore, there did not seem to be any immediate probability of the funds of the association being required in full for expenses.

You will note that we started the year with a good balance—\$1,056.19. We close the year with even a better balance. On the sheet it is given as \$1,580.30, including the \$700 invested in bonds.

I have not sent out urgent requests for the payment of dues. I suppose you all have copies of the constitution, unless you have lost or destroyed them, and you are all cognizant of the fact that dues are required after the 1st of July and before the convening of the regular annual meeting. I think there are only three or four commissions entitled to take part in the discussions and to vote at this convention. I did not feel like sending out urgent requests for \$50 from each commission when there was a balance of approximately \$1,600, and when our annual rate of expenditure for the past year was only about \$100. It seems to me the question must be decided by this body as to what financial policy we are going to follow before I will have the heart to appeal for more funds.

I submit my report as secretary and a statement of the finances of the association.

## REPORT OF THE SECRETARY.

The International Association of Industrial Accident Boards and Commissions now includes the following 32 active members:

- United States Employees' Compensation Commission.
  - United States Bureau of Labor Statistics.
  - The Industrial Accident Commission of California.
  - The Workmen's Compensation Commission of Connecticut.
  - The Workmen's Compensation Boards of Hawaii (counties of Kauai, Maui, Hawaii, and Honolulu).
  - The Industrial Board of Illinois.
  - The Workmen's Compensation Service of Iowa.
  - The Industrial Accident Commission of Maryland.
  - Industrial Accident Board of Massachusetts.
  - Industrial Accident Board of Michigan.
  - Department of Labor and Industries of Minnesota.
  - Industrial Accident Board of Montana.
  - Department of Labor of New Jersey.
  - New York State Industrial Commission.
  - Industrial Commission of Ohio.
  - Industrial Commission of Oklahoma.
  - Industrial Accident Commission of Oregon.
  - Department of Labor and Industry of Pennsylvania.
  - Industrial Accident Board of Texas.
  - Industrial Commission of Utah.
  - Industrial Insurance Department of Washington.
  - State Compensation Commissioner of West Virginia.
  - Industrial Commission of Wisconsin.
  - Compensation Commissioner of Wyoming.
  - Department of Labor of Canada.
  - Workmen's Compensation Board of Alberta.
  - Workmen's Compensation Board of British Columbia.
  - Workmen's Compensation Board of Manitoba.
  - Workmen's Compensation Board of New Brunswick.
  - Workmen's Compensation Board of Nova Scotia.
  - Workmen's Compensation Board of Ontario.
  - Department of Public Works and Labor of Quebec.
- Two active members, the Workmen's Compensation Board of Alberta and the Workmen's Compensation Board of New Brunswick, have been added since the last annual meeting.

The United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada are exempt from the payment of annual dues.

The following are associate members: Idaho Industrial Commission, Workmen's Relief Commission of Porto Rico, Republic Iron & Steel Co. Two of these associate members, the Idaho Industrial Commission and the Republic Iron & Steel Co., have joined since the Madison convention.

In April, 1916, at the Columbus convention of the association, I suggested that the United States Bureau of Labor Statistics publish the proceedings of that meeting and distribute the report without charge to the association. This offer was promptly accepted. At the same meeting I, as United States commissioner of labor statistics, was chosen secretary of the association. The value to the organization of a national secretariat with great resources for obtaining and disseminating information relating to compensation matters

to the industrial accident boards and commissions is, I think, recognized by all. Not only have the proceedings been published and distributed at Government expense, but a vast amount of information of the greatest practical value to the industrial accident boards and commissions has been made available through the Monthly Labor Review and the bulletins of the United States Bureau of Labor Statistics. Furthermore, many important specific inquiries from the industrial accident boards and commissions have been answered by the Bureau through correspondence.

I am willing to continue the secretariat of the association in the Bureau of Labor Statistics if the association so desires. Last year I stated that I did not see how I would be able to publish the Madison proceedings, as the Bureau's printing appropriation at that time had been reduced by more than one-half. The publication of this report has been provided for, but the expense will fall upon the appropriation for 1920 instead of 1919, the year referred to by me when I stated that I thought it might not be possible for the Bureau to publish the 1918 proceedings. My appropriation will, I think, warrant the publication of the proceedings of this 1919 conference.

If the secretariat is to be continued under the present arrangement, the annual dues of the organization are too high and should be cut down. I think \$25 annual dues for each active member would more than cover the annual expenses of the association if this Bureau is to carry most of the expenses, as it now does.

Disbursements since the last annual report of the secretary-treasurer to the Madison meeting in 1918 have been a little less than \$100. These disbursements include no charge for the reporting of meetings and practically no stenographic and typewriter costs for correspondence. Most of the stenography and typewriting in connection with the correspondence was done in Government hours, as such work for the most part falls within the regular functions of the Bureau. It was not practicable to have the correspondence work carried on by my secretary and assistant secretary at odd intervals after closing time, as letters of the association usually require immediate attention.

If the association desires to establish a central office and to be financially independent, the annual income of the organization derived from membership dues should be about \$6,500, including a salary of \$2,000 for a secretary, \$500 for stenographic and clerical work, \$400 for reporting the proceedings, and \$3,000 for the printing of the annual proceedings. The report of the Boston meeting, Bulletin No. 248, consisting of 306 pages, cost the Bureau approximately \$1,950. This charge covered only composition and printing, and did not pay for the editorial and clerical work required to bring out the bulletin.

At its last meeting the committee on statistics and compensation insurance cost recommended that the United States Bureau of Labor Statistics send a representative into the various States to study administrative practices and encourage the industrial accident boards and commissions in improving the statistical foundation for the administration of workmen's compensation laws. In accordance with this recommendation, I assigned an agent to this work, and satisfactory progress is being made.

In my report to the association last year I cited the aggravating and utterly inexcusable circumstances which delayed the publication of the Boston proceedings. The meeting was, as you will recall, held in August, 1917. Notwithstanding my strong and reiterated appeals, some of the papers did not reach the Bureau until April 4, 1918. By that time the congestion in the Government Printing Office had become so great that it was impossible to get anything printed except the most urgent war emergency matter. Some of the men who

had made addresses at the Boston meeting but had sent in no copies of their papers did not even show enough interest in their own utterances to reply to my repeated appeals for such copies. I also had an immense amount of trouble in getting most of the stenographic transcripts of discussions. After months of delay, during which time the stenographers seemed to have entirely forgotten the meaning of their notes, if ever they had any meaning, I received inchoate masses of more or less meaningless words. I had to cut out most of the stenographic reports of the alleged sayings of speakers. In doing so some good material was sacrificed. The proceedings (Bulletin No. 248) were finally issued in May, 1919.

Some of you will recall that the president of the association last year promised to see that the proceedings of the 1918 meeting should be properly reported and promptly sent in. Despite this promise and my repeated entreaties and demands for the transcripts of the discussions of the Madison meeting, these reports have never been forwarded to me. After waiting until June 25, 1919, I transmitted the addresses which speakers had submitted to the Government Printing Office to be published without the discussions. More than nine months after it was delivered I received the paper of one of the medical men who addressed the conference. Need I comment further upon the ghastly inefficiency of such systematic indolence and indifference. If speakers have said anything worth saying, it is worth publishing. It is just as easy to get an address ready in July, 1919, as it is to get it ready in the following July, after exhausting the patience of your secretary and the editors of the Bureau, and causing no end of inconvenience and waste of time, besides burdening the mails with unnecessary correspondence. The proceedings should be published promptly, not a year after the meeting. Such addresses as speakers have sent in, together with the resolutions adopted at the fifth annual meeting of the International Association of Industrial Accident Boards and Commissions, will appear in Bulletin No. 264 of the Bureau of Labor Statistics.

I can not too strongly emphasize the necessity for having an adequate number of expert reporters at our annual conventions. The discussions are often a most valuable part of the proceedings and should be embodied in the final report.

I wish again to point out the importance of speakers sending in copies of their papers and summaries thereof in time to be printed for distribution in advance of the meeting. Intelligent consideration and discussion can not be given to a subject without devoting time to think about it. A session given over to the reading of formal papers and set speeches appeals to but few people. Poor oral discussion is better than fine formal papers. The greatest good this association can accomplish is to get members and delegates to stand up and talk about their difficulties and problems freely and without constraint. Commissioners need to forget that the compensation law which they are engaged in administering is the finest and most ideally perfect law that ever was framed by the hand and mind of man. All compensation laws are so imperfect and defective that no commissioner need fear to admit the shortcomings of his own State's law. What we need is more free and frank discussion. The only way to get more discussion is to devote less time to formal papers. The best way to cut down the time given to papers is to print them in advance, and then require the writer to summarize his presentation briefly so as to bring out the principal points, distribute the emphasis, and explain the obscure and difficult phases. It has been and will continue to be my policy to encourage every delegate in attendance to get into the discussions. We must have papers to guide the thoughts and discussions of delegates, but the papers must not be allowed

to monopolize the time which is needed by the commissioners to tell of their difficulties and how they are meeting them.

I had intended to have all the papers printed and distributed in advance of the Madison meeting, but the enormous amount of war work, combined with the setting forward of the date of the conference by two weeks, interfered with the success of my plan. By September 9, 1918, however, 18 papers out of the 37 on the Madison conference program had been received at the Bureau. I asked that these papers, together with summaries, should be submitted by August 15. Only six of the speakers prepared summaries or synopses of their papers as requested. The 12 papers without summaries had to be gone through carefully and summarized by the editors of my Bureau. I sent out requests this year that papers be in my hands not later than August 1 or August 15 according to the time of sending the request. Up to the date of this report 15 out of the 25 papers for this 1919 convention have been received at the Bureau. These have been sent to the Government Printing Office and 10 are already printed and delivered. Only seven of the speakers, however, have sent in summaries of their addresses. Speakers, when they find that it is impossible to complete their addresses in time to have them printed, should send in summaries, so that I can have the summaries mimeographed for distribution. The editorial division of my Bureau is so overwhelmed with work that it is an imposition to oblige the editors to make summaries of papers. Besides summaries made by anyone other than the author himself are never satisfactory, especially to the author.

The papers should be sent in far enough in advance of the annual meeting, so that galleys could be printed and corrected by the authors before the addresses are set up in page proof for distribution. The obvious wisdom of this plan of procedure must be evident to all of you who have read the page proof of your addresses for this conference.

There are four standing committees of the International Association of Industrial Accident Boards and Commissions, namely, the committee on statistics and compensation insurance cost, the committee on jurisdictional conflicts, the medical committee, and the safety committee. The only committee that has been at all active since the formation of the association is the committee on statistics and compensation insurance cost. This committee held two meetings during the past association year, and will submit an important report to the convention, as is its custom every year.

The committee on jurisdictional conflicts has been inactive as a committee because of the passive or hostile attitude toward positive legislation to put railway and other interstate employees under compensation. It has also been impossible for me to get the committee together, because Mr. Pillsbury lives at such a distance. I did try to induce the railroad brotherhoods that held meetings this year to indorse the principle of workmen's compensation to cover the railway and other interstate employees. Information was compiled in my Bureau clearly setting forth the inadequacy of the liability laws and the superiority of compensation laws to protect injured workers. In spite of this the trainmen have again reiterated their unalterable opposition to the workmen's compensation principle. The firemen and enginemen have given their president discretionary powers on the subject; and the conductors favor an optional provision giving the employee his choice between the Federal liability statute and the compensation law of his State. The engineers favor a Federal compensation law.

Nothing has been done by the committee on jurisdictional conflicts in regard to maritime and longshore workers since its action in framing and aiding to secure the passage of the amendment to the Judicial Code, which gives such

employees a right to come, if they so desire, under the compensation law of the State in which they reside.

Now that we know definitely where the railroad brotherhoods stand, it would seem to me highly desirable to enlarge the membership of the committee on jurisdictional conflicts and work actively for the passage of a Federal law which will take care of railroad employees, as well as longshoremen and seamen.

The medical and safety committees have never held a meeting since they were created. It is especially desirable that the medical committee should become an active, aggressive committee, comparable with the committee on statistics and compensation insurance cost. Although the commissions have not yet realized it, the administration of compensation laws is absolutely dependent upon competent medical service and adequate statistical data as to accident occurrence, severity, and medical and surgical results. Medicine and statistics are the two legs upon which compensation administration must stand and walk. In the forthcoming association year the medical committee should meet as frequently as possible, in order to perfect plans for improving the medical service under the compensation laws and rooting out the evil practices which do so much to destroy confidence in the beneficial working of compensation legislation. I think the medical committee should take a heroic dose of the elixir of life. The members should contribute something more positive to the activities of the association than to lend their names for the purpose of adorning the letterheads of the association. What I have said of the medical committee would apply with almost equal force to the safety committee. Either these committees should be abolished or they should be active functioning committees.

The amalgamation of the International Association of Industrial Accident Boards and Commissions with the Association of Governmental Labor Officials of the United States and Canada does not seem practicable at this time, but I think it is highly important that these two organizations, and probably the American Association of Public Employment Offices, should hold their annual conventions at the same time and place. A joint meeting has several obvious advantages: First, it would enable more States and Provinces to be represented at these conventions. In many States it is very difficult for officials to secure permission to travel outside the State. Few State officials can afford to pay their own expenses even to one convention a year. The time and money spent in attending three official conferences of governmental labor officials are considerable and much could and should be eliminated. Many labor administrators would like to attend some sessions of all three associations. In fact, the functions of the compensation commissions, the bureaus of labor, and the employment offices are so closely related that we would all benefit by meeting together and holding some sessions jointly.

Another very important advantage of meeting at the same time and place would result from the necessity of arranging the programs jointly, thus insuring correlation, continuity, and progress in the programs of all three associations. I think that one of the greatest benefits growing out of the location of the secretariat of the International Association of Industrial Accident Boards and Commissions in the Federal Bureau of Labor Statistics has been the securing of greater continuity in the programs and policies of the association. The practice of the International Association of Industrial Accident Boards and Commissions of holding its annual convention in the residence city of the president of the association has proven very satisfactory. It may and probably will be necessary to discontinue this practice if joint meetings are to be held with these two other associations of labor officials. The benefits of holding

joint meetings, however, will probably outweigh the disadvantages of holding meetings outside of official residence city of the head of our organization.

The Association of Governmental Labor Officials of the United States and Canada is planning to hold its next convention in Seattle, Wash., in the week beginning July 26, 1920. It is greatly to be hoped that the International Association of Industrial Accident Boards and Commission will arrange to hold its next annual meeting at such time and place that delegates may attend both conventions. If it can not be arranged to meet in the same place, the next meeting of this association should take place either the week before or the week after the meeting of the Governmental Labor Officials and not too far from Seattle. Otherwise there is likely to be a very sparse attendance at both meetings.

This association calls itself an international association, but no attempt has been made to extend membership beyond the United States and Canada. I think serious consideration should be given to the question as to whether the association should not attempt in the forthcoming year to induce the Republics to the south of us to join the organization. Some of these States have excellent compensation laws. No doubt these countries would profit greatly by joining the association and sending representatives to the annual meetings to listen and participate in the discussions.

It is too early as yet to foretell what will be the fate of the League of Nations, the proposed International Labor Bureau, and the Annual International Labor Conference. It will be a misfortune to encumber this association with too much international formalism and red tape. One of the principal advantages of this association has been the delightful informality of procedure and the freedom from the necessity of dealing through the State Department and foreign offices in arranging for conferences and carrying on the routine business of the organization. If we can establish equally cordial informal relations with the administrators of the compensation laws in our sister Republics of the south, I think it would be advantageous to do so. Otherwise I should recommend confining the membership within its present limits.

Respectfully submitted.

ROYAL MEEKER, *Secretary-Treasurer.*

## REPORT OF THE TREASURER.

### RECEIPTS.

1918.		
Sept. 18.	Balance on hand, including postage fund of \$9.84.....	\$1,056.19
	21. Oklahoma State Industrial Commission, annual dues, 1919..	50.00
	23. New York State Industrial Commission, annual dues, 1919..	50.00
Oct. 3.	Workmen's Relief Commission of Porto Rico, associate membership dues, 1919.....	10.00
	4. Liberty bonds (fourth issue), 1 at \$500 and 2 at \$100.....	700.00
	8. New Jersey Department of Labor, annual dues, 1919.....	50.00
	15. Montana Industrial Accident Board, annual dues, 1919....	50.00
	21. West Virginia Compensation Commissioner, annual dues, 1919.....	50.00
	23. Republic Iron & Steel Co., associate membership dues, 1919..	10.00
	25. Ontario Workmen's Compensation Board, annual dues, 1919..	50.00
Nov. 11.	British Columbia Workmen's Compensation Board, annual dues, 1919.....	50.00
	18. Minnesota Department of Labor and Industry, annual dues, 1919.....	50.00

1918	
Dec. 12. New Brunswick Workmen's Compensation Board, annual dues, 1919.....	\$50.00
1919.	
Jan. 1. Interest on deposits.....	7.40
Feb. 13. Alberta Workmen's Compensation Board, annual dues, 1919.....	50.00
Apr. 16. Interest on Liberty bonds.....	14.14
June 16. Illinois Industrial Commission, annual dues, 1919.....	50.00
July 1. Interest on deposits.....	8.30
23. Idaho Industrial Commission, associate membership dues, 1919.....	10.00
Aug. 11. Connecticut Workmen's Compensation Commission, one-fifth annual dues, 1920.....	10.00
Sept. 18. Unexpended postage and telegraph fund and 77 cents in stamps.....	5.66
Total .....	<u>2,381.69</u>

## DISBURSEMENTS.

1918.	
Postage and telegraph fund.....	\$9.84
Oct. 4. To Washington Loan & Trust Co. for one \$500 and two \$100 Liberty bonds.....	700.00
14. B. H. Seals for services in operating motion pictures during annual meeting at Madison, Wis.....	7.50
Tracy and Kilgore for 500 registration cards for Madison meeting.....	3.00
1919.	
Mar. 31. Gibson Bros. (Inc.), for letterheads.....	9.75
Apr. 22. Eva M. Butler for stenographic and typewriting work.....	3.15
May 1. Postage and telegraph fund.....	15.00
Aug. 5. Postage and telegraph fund.....	10.00
13. Gibson Bros. (Inc.), 1,000 programs and alterations in proof.....	22.50
Sept. 15. For three long-distance telephone calls (New York, Baltimore, and Harrisburg).....	6.40
16. Gibson Bros. (Inc.), for 500 copies of revised program.....	11.25
Celestine Bignami, for stenographic and typewriting work.....	3.00
16. Balance (bank deposits, Liberty bonds, and postage and telegraph fund, including 77 cents in stamps).....	1,580.30
Total .....	<u>2,381.69</u>

It will be noted that last October I invested \$700 of the association's funds in Liberty bonds. There seemed to be no immediate prospect of the funds of the association being needed to meet expenses, and the rate of interest on the bonds (4½ per cent) was very materially higher than the savings bank interest rate, so I recommended the investment. This was approved by the executive committee. I am ready at any time to take these bonds from the association at their face value.

The dues of the Workmen's Compensation Board of Manitoba were paid July, 1918, and were credited to 1920 for reasons set forth in my financial statement of last year, and one-fifth of the annual dues of the Workmen's Compensation Commission of Connecticut has been paid for 1920. With these two exceptions

no membership dues have been paid for the present fiscal year. According to the constitution these dues are payable after July 1, 1919, and must be paid before the annual meeting in order to entitle members to representation and the right to vote. This provision of the constitution has been more honored in the breach than in the observance, as shown by the receipt dates for dues in this financial statement and also in the financial statement of 1918.

The question of the amount of dues will have to be taken up before this conference adjourns. With a balance of \$1,580 (including \$700 in Liberty bonds), and with disbursements since the last annual meeting amounting to only about \$100, I do not feel warranted in calling for the payment of further dues until the future policies of the association are decided upon. If the secretariat is to continue to be vested in the United States Commissioner of Labor Statistics, and the proceedings are to be brought out by the Bureau of Labor Statistics, the annual dues of the association are too high and could easily be cut down by one-half. On the other hand, if the association decides to set up an independent organization, providing the entire expenses of a central office, including salaries for a secretary, with a stenographic and clerical force, and to publish and distribute the proceedings independently of the Bureau of Labor Statistics, the income of the association should be, I estimate, about \$6,500 per annum, as suggested in my secretarial report.

Respectfully submitted.

ROYAL MEEKER, *Secretary-Treasurer.*

The CHAIRMAN. The usual practice, gentlemen, with reference to the report of the treasurer is to refer it to an audit committee to report at a later stage of the meeting, and I take the liberty of suggesting that committee be Mr. Kennard, of Massachusetts, and Mr. Sinclair, of New Brunswick.

The only other business remaining for the morning is the appointment of special committees for the convention and the reading of certain amendments to the constitution. The provision of the constitution is that any amendment which is proposed to be made should be read at the first day of the convention, and then upon its adoption before the conclusion of the convention the amendment becomes effective. The executive committee met and proposed certain amendments to the constitution, and I will ask Dr. Meeker to read those.

I would suggest the following special committees for the convention:

*Resolutions committee.*—Mr. A. B. Funk, of Iowa, chairman; Mr. Marshall, of Oregon; and Mr. Wilson, of Manitoba.

*Committee on nominations and place of meeting.*—Mr. Wilcox, of Wisconsin, chairman; Mr. Armstrong, of Nova Scotia; and Mr. Duffy, of Ohio.

*Committee on amendments to the constitution.*—Mr. Andrus, of Illinois, chairman; Mr. French, of California; and Mr. Brown, of Washington.

Dr. MEEKER. The changes in the constitution which I submitted to the executive committee last night were approved by the committee. They are merely verbal changes for the most part.

The CHAIRMAN: The suggested amendments are referred to the committee on amendments. It will be out of order, of course, to have any discussion on these amendments at the present time. When the committee brings in the report later in the meeting, then the whole question of amendments will be open for discussion. At the same time I desire to say if any member has any suggestion to offer or amendment to suggest before the day is over it will still be quite in order before the conclusion of the evening session to make any suggestion. They can all then be referred to this committee.

I think that will conclude the session of the morning.

The constitution as amended now reads as follows:

CONSTITUTION OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS.

ARTICLE I.

This organization shall be known as the International Association of Industrial Accident Boards and Commissions.

ARTICLE II.

*Objects.*

SECTION 1. This association shall hold meetings once a year or oftener for the purpose of bringing together the officials charged with the duty of administering the workmen's compensation laws of the United States and Canada to consider and, so far as possible, to agree on standardizing (a) ways of cutting down accidents; (b) medical, surgical, and hospital treatment for injured workers; (c) means for the reeducation of injured workmen and their restoration to industry; (d) methods of computing industrial accident and sickness insurance costs; (e) practices in administering compensation laws; (f) extensions and improvements in workmen's compensation legislation; and (g) reports and tabulations of industrial accidents and illnesses.

SEC. 2. The members of this association shall promptly inform the United States Bureau of Labor Statistics and the Department of Labor of Canada of any amendments to their compensation laws, changes in membership of their administrative bodies, and all matters having to do with industrial safety, industrial disabilities, and compensation, so that these changes and occurrences may be noted in the Monthly Review of the United States Bureau of Labor Statistics and the Canadian Labor Gazette.

ARTICLE III.

*Membership.*

SECTION 1. Membership shall be of two grades—active and associate.

SEC. 2. *Active membership.*—Each State of the United States and each Province of Canada having a workmen's compensation law, the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada shall be entitled to active membership in this association. Only active members shall be entitled to vote through their duly accredited delegates in attendance on meetings.

SEC. 3. *Associate membership.*—Any organization or individual actively interested in any phase of workmen's compensation or social insurance may be admitted to associate membership in this association by vote of the executive committee. Associate members shall be entitled to attend all meetings and participate in discussions, but shall have no vote either on resolutions or for the election of officers in the association.

#### ARTICLE IV.

##### *Representation.*

SECTION 1. Each active member of this association shall have one vote.

SEC. 2. Each active member may send as many delegates to the annual meeting as it may think fit.

SEC. 3. Any person in attendance at conferences of this association shall be entitled to the privileges of the floor, subject to such rules as may be adopted by the association.

#### ARTICLE V.

##### *Annual dues.*

SECTION 1. Each active member shall pay annual dues of \$50, except the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada, which shall be exempt from the payment of annual dues: *Provided*, That the executive committee may, in its discretion, reduce the dues for active membership for those jurisdictions in which no appropriations are made available for such expenditures, making it necessary that the officials administering the law pay the annual dues out of their own pockets for the State.

SEC. 2. Associate members shall pay \$10 per annum.

SEC. 3. Annual dues are payable any time after July 1, which date shall be the beginning of the fiscal year of the association; dues must be paid before the annual meeting in order to entitle members to representation and the right to vote in the meeting.

#### ARTICLE VI.

##### *Meetings of the association.*

SECTION 1. An annual meeting shall be held at a time to be designated by the association or by the executive committee. Special meetings may be called by the executive committee. Notices for special meetings must be sent out at least one month in advance of the date of said meetings.

SEC. 2. At all meetings of the association the majority vote cast by the active members present and voting shall govern, except as provided in article X.

#### ARTICLE VII.

##### *Officers.*

SECTION 1. Only officials having to do with the administration of a workmen's compensation law or bureau of labor may hold an office in this association, except as hereinafter provided.

SEC. 2. The association shall have a president, vice president, and secretary-treasurer.

SEC. 3. The president, vice president, and secretary-treasurer shall be elected at the annual meeting of the association, and shall assume office at the last session of the annual meeting.

SEC. 4. If for any reason an officer of this association shall cease to be connected with any agency entitled to active membership before the expiration of his term, he may continue in office notwithstanding until the next annual meeting; but if for any reason a vacancy occurs in the office of president, the executive committee shall appoint his successor.

#### ARTICLE VIII.

##### *Executive committee.*

SECTION 1. There shall be an executive committee of the association, which shall consist of the president, vice president, the retiring president, secretary-treasurer, and four other members elected by the association at the annual meeting.

SEC. 2. The duties of the executive committee shall be to formulate programs for all annual and other meetings and to make all needed arrangements for such meetings; to pass upon applications for associate membership; to fill all offices which may become vacant; and, in general, to conduct the affairs of the association during the intervals between meetings. The executive committee may also reconsider the decision of the last annual conference as to the next place of meeting and may change the place of meeting if it is deemed expedient.

#### ARTICLE IX.

##### *Quorum.*

The president or the vice president, the secretary-treasurer, or his representative, and one other member of the executive committee shall constitute a quorum of that committee.

#### ARTICLE X.

##### *Amendments.*

This constitution, or any clause thereof, may be repealed or amended at any regularly called meeting of the association. Notice of any such changes must be read in open meeting on the first day of the conference, and all changes of which notice shall have thus been given shall be referred to a special committee, which shall report thereon at the last business meeting of the conference. No change in the constitution shall be made except by a two-thirds vote of the members present and voting.

**TUESDAY, SEPTEMBER 23—AFTERNOON SESSION.**

**CHAIRMAN, A. B. FUNK, INDUSTRIAL COMMISSIONER WORKMEN'S  
COMPENSATION SERVICE OF IOWA.**

**ADMINISTRATIVE PROBLEMS.**

The CHAIRMAN. The secretary has some announcements to make.

The SECRETARY. I want to call your attention to the fact that a number of the papers have been printed and can be obtained at the desk. I would suggest that you follow the program and read the papers that are to come in the sessions of the day. For example, this evening Mr. French will give a paper, "The larger idea in workmen's compensation," and I suggest that you should all read it and come prepared to discuss that general topic.

The CHAIRMAN. We have a full program covering many interesting and intricate problems of administration. In the interest of time saving I will submit a few suggestions, through a paper, for the sake of opening the discussion.

## LUMP-SUM SETTLEMENTS.

BY A. B. FUNK, INDUSTRIAL COMMISSIONER WORKMEN'S COMPENSATION SERVICE OF IOWA.

In all States and Provinces it should be within the power of administration to deny lump-sum settlement. The exercise of such authority I hold to be among the most delicate and responsible of all my official duties. Few workmen or dependents are qualified by training or otherwise to handle considerable sums of money. In many cases commutation would almost certainly mean dissipation of a sacred living reserve, involving indulgence that warps character and career, perhaps penury and want, and ultimate burden upon society. Commutation should almost never be permitted except to make wise payment on a home or in cases where cash may be safely invested in undertaking fitting into special qualifications on the part of one who may safely propose to increase limited earning capacity. Regardless of pressure from any source, administration should never be so much occupied or so little concerned as to take serious chances in this vital proceeding.

Hernia is understood to be most troublesome to administration of all compensable injuries. It seems to me we more and more make plain the safe trail of procedure. We must have proof to a degree conclusive that something of an accidental nature actually happened at a specific time and a given place to break down the workman—to incapacitate him, to make it necessary for him to seek a remedial agency. Then we should not waver in holding the employer, no matter what doctors may say as to predisposition or inguinal rings, or as to the nonexistence of the clearly obvious. Compensation is successfully nullifying the philosophy of doctors in cases where workmen regularly performing able-bodied service are broken down with industrial accident as the proximate cause. No amount of theory can defeat the plain intent of the law and the humane purpose of this service. Doctors are important to compensation as are cooks to general society, but in reading the book of nature they sometimes mistake a flyspeck for a mark of punctuation.

In Iowa we have fought extraterritoriality to a finish and won completely in the supreme court on a statute rather vague and indefinite. The idea that an employer and an employee living in the same community, perhaps in the same ward or the same block, have

to go to a distant State to settle a controversy under personal injury is repugnant to justice and unthinkable as common sense.

Iowa gets along very well with the matter of medical fees through patient investigation and the aid of medical counsel with ample nerve to stand for a square deal, no matter whether an insurance company or an orphan gets the benefit.

We never approve of commutation until attorneys' fees are approved—that is to say, hardly ever, and the rare exception proves the importance of the usual rule. Most attorneys deal with the workman or dependent with a realizing sense of the appealing situation; but there are others. In Iowa many lawyers of standing simply leave the fixing of attorney fees to the commissioner.

With some difficulty Iowa has established the right of employers to select physicians and the duty of workmen to accept the same if they would escape the expense. It would now seem to be commonly understood that such a rule is in the interest of all concerned. Some insurers ignore this rule and leave the employee free to make his own selection.

Back strain and other injuries not included in the schedule will continue to be the source of considerable embarrassment until some wizard of invention develops a painometer and automatic disability register. Such cases are the plague of the faithful and the refuge of the malingerer. They require on the part of just administration the most painstaking consideration that employers be not inequitably burdened or that really unfortunate workmen be not wrongfully denied.

If by direct settlement is meant settlement directly with the employee or dependents without departmental approval, we know of no such thing in Iowa, and I would think it easily subversive of justice and an invitation to abuse.

Reports of all reportable accidents are not secured—not in Iowa. We harass the delinquent and the recalcitrant with statutory menace, and sometimes invoke the law and impose a fine, but confess to much embarrassment in frequently failing to find the accident report in the department file.

Iowa permits self-insurance under strict requirements of the insurance and compensation departments as to guaranteed responsibility. It is on the gain among Iowa employers, and many seem to find it to their advantage. Self-insurance appears to promote better relations between employer and employee in that it is more sympathetically administered, each workman being dealt with as a personality rather than as an industrial unit; and in a period of partial incapacity the workman is usually provided with employment suited to his physical condition.

The first paper on the program proper is "Compensation law administration," by J. F. Connor, commissioner appointed by the governor to investigate the New York State Industrial Commission. I understand that Mr. Connor is not present, but his paper is here and will be read by the secretary.

The SECRETARY. I have just received a telegram this morning from Mr. F. Spencer Baldwin saying that he is detained and can not be here. He is sending his paper, but it has not arrived.

Just this noon I received a telegram from Mr. Connor saying that he is detained by an investigation now proceeding in New York State, but his paper is here and he asks that it be read. As I have seen the paper and am more or less familiar with it, I suppose I had better read it myself. I may say that it has not been the custom of this organization to have papers of absentees read, but I feel that this subject is so important that it should be placed before you.

## COMPENSATION LAW ADMINISTRATION.

BY JEREMIAH F. CONNOR.

[Read by Royal Meeker, United States Commissioner of Labor Statistics.]

Laws providing compensation to workmen who have become the victims of industrial accidents are of comparatively recent origin. The basic principle of the compensation statute is to pay the workman without regard to fault as a contributing cause of the injury. The burden of the industrial accident is shifted from the employee to his employer, who in turn passes the burden along to the community at large as one of the elements which make up the cost of production. When the system was first proposed it was met with the constitutional objection that property of the employer was taken without due process of law. This constitutional objection has been definitely settled by decisions of our courts, including the Supreme Court of the United States.

This humanitarian legislation has now become so firmly established as a branch of our industrial jurisprudence that administration features in connection therewith have become one of the timely topics. It is my purpose to point out briefly a few of the features connected with the workmen's compensation law of the State of New York as revealed by the investigation which I am conducting for the governor of the State under section 8 of our executive law.

Before taking up these matters in detail, I desire to call your attention to the following statement in relation to "claim settlements" contained in the recent report of E. H. Downey, special deputy of the Pennsylvania insurance department, in relation to the compensation law of the State of Ohio. I am making this quotation because to my mind it conveys the ideal to be attained in the adjustment of compensation cases:

The two great desiderata in the handling of compensation claims are *prompt* and *full* payment of the benefits provided by law. Workmen's compensation acts are placed upon the statute books for the relief of injured workmen and their dependents. Such legislation being humanitarian in purpose, public policy requires that the law should be liberally construed and reasonable doubt resolved in favor of the claimant. Any attempt to withhold compensation on mere technicalities, to cut off payment before disability has ceased, to harass claimants with procedural delays, or to coerce them into accepting less than the full legal benefits, is contrary to the whole spirit and intent of workmen's

compensation. But it is not enough that every equitable claim shall ultimately be paid in full. Delay is emphatically a denial of justice. Few workmen have such surplus of income that they can afford to wait weeks or months for the commencement of compensation. When the weekly pay check stops destitution is never far away. Promptness in bringing relief to the sufferers is of the very essence of any sound scheme of social insurance.

In most jurisdictions the amount of compensation is adjusted directly between the employer and the employee. In most cases the adjustment is made for the employer by an insurance carrier. The New York State law provides a State insurance fund, permits insurance with stock and mutual companies, and also permits employers in certain cases to carry their own insurance. In its original form there was no provision for settlements directly between the claimant and the employer. All claims were determined by the commission and payments were made directly by the commission out of funds deposited by the insurance carriers. In 1915 the law was amended, permitting what we term "direct settlements." Under this system the claimant and the employer made an agreement as to the amount of compensation, and in a great majority of cases the agreement was approved by the industrial commission pro forma without hearing. This change in the law became the subject of political discussion, and as a result of many complaints the present governor, Hon. Alfred E. Smith, directed an investigation of the management and affairs of the State industrial commission, one purpose of which was to find out whether the change in the law resulted to the disadvantage of the injured workman. To determine this question 1,000 direct-settlement cases were taken in chronological order, and with the assistance of employees of the industrial commission about 350 cases were selected in which the description of the injury indicated a permanent partial disability. The compensation law of New York, under an amendment which became effective July 1, 1917, authorizes a specific award for permanent partial disability which results in partial loss of use of the hand, arm, foot, leg, etc. It was immediately found that this class of cases was almost entirely covered up by the direct-settlement system. The claimants were paid only until such time as they were able to resume work. When these test cases were reheard by the commission additional awards were made in sums ranging from a small amount to \$2,500. In a single direct-settlement case brought to my attention as a result of the publicity resulting from the investigation, an additional award was made, amounting to \$3,500.

The investigation also revealed many other methods by which claimants were unfairly treated. In some cases the wages were incorrectly reported, and where the claimant was a minor the fact that his wages might increase was not taken into consideration, as provided by subdivision 5 of section 14 of the New York law. Many cases were discovered in which the disability extended beyond 49 days,

and the claimant received no compensation for the first two weeks. There were numerous cases in which the claimant lost one or two weeks' compensation upon a report from the physician employed by the insurance company to the effect that the claimant was able to work, upon which statement compensation was terminated. There was also a case in which the claimant was entitled to compensation for disfigurement.

The conditions were so bad that when the report was transmitted to the legislature not a voice was heard in the State of New York in support of the direct-settlement plan. A law was unanimously passed and signed by the governor requiring the industrial commission to hold a hearing in every case. And while direct settlements are still permitted, it is only for the purpose of expediting payments, with a hearing by the industrial commission before the case is closed.

In connection with my investigation Hon. William C. Archer, deputy commissioner in charge of the bureau of compensation, sent out the following questionnaire to the industrial commissions in other States:

Question: Speaking of agreement compensation cases in which the employer (or insurance carrier) and the injured workman enter into an agreement on their own motion for the payment and receipt of compensation, which agreement ordinarily has a pro forma approval, I desire to inquire what percentage of such cases afterwards actually come to trial before the compensation commission (or other administrative body) or deputy commissioner for the official determination of one or more facts pertaining to the case? If figures are not just at hand, please approximate as close as possible.

The following replies have so far been received:

*Maine.*—Out of 4,000 compensation cases last year there were probably 100 hearings held in connection with the adjudication of whatever compensation might be payable. (This was signed by the secretary of the commission.)

*Kentucky.*—Out of 36,157 accidents reported to our office since the act became effective on August 1, 1916, we have had filed 393 claims, and these claims cover the entire field of litigation under our act since it became effective. (This signed by C. J. Howes, officially connected with the compensation board.)

*Illinois.*—As I have stated in my former letter to you, we do not have a form agreement where compensation is paid without contest. The duplicate receipts of payments made are sent in, which of course indicates an agreement. We may be wrong, but we have never been able to see how a form agreement would give us any further information than we have by the receipts, or how it would accomplish any useful purpose. (This signed by the chairman of the commission.)

*Minnesota.*—We would estimate that about 2 per cent of these cases are reopened because of errors discovered in checking in the statistical division in the department of labor and industries.

*Pennsylvania.*—My question was not answered except by the receipt of a little report, which is attached. I have marked items on pages 9 and 12.

*Massachusetts.*—I had occasion yesterday to talk to Mr. Dudley S. Holman, who was for a long time on the Massachusetts commission. He tells me that

90 per cent of the cases have a pro forma treatment and that 10 per cent come up for adjudication. By the way, do you know that in Massachusetts the insurance company can not cease to pay if there be a dispute about the return to work, as long as the claimant really does not return to work but has to go before the commission to obtain a "discontinuance of award"?

*South Dakota.*—Have had but two such cases as yet, in one of which the insuring company, of their own motion, resumed payments; and in the other, on the suggestion of this department, they investigated the case and resumed payments without a hearing for reopening of the case. (This signed by the deputy industrial commissioner.)

*Connecticut.*—One thousand eight hundred and ninety hearings, 600 of which are settled without a finding by the commission; hence 1,291 adjudications.

*Indiana.*—I wish to say that it is impossible to give you an absolutely accurate statement of the percentage of cases settled by agreement which afterwards came before the industrial board for consideration. However, the percentage is very small, etc.

*Colorado.*—Replying to your letter of March 12. For the fiscal year ending December 1, 1918, our records show that we were required to try 22 cases out of a total number of 3,478 agreements theretofore approved.

*Vermont.*—If all minor questions and all formal and informal hearings were taken into consideration, certainly 50 per cent of the cases in which compensation is paid involve a hearing or trial of some kind or another. It must be borne in mind, however, that many of these cases involve but one question and that the hearings are of necessity very short.

*Iowa.*—During the year from July 1, 1917, to June 30, 1918, out of 4,367 compensation settlements reported and 71 cases arbitrated only 6 were reopened and officially determined by the commissioner.

*Michigan.*—It is a little difficult to answer your question, but I think we may safely say that from 90 to 95 per cent of the agreement cases dispose of themselves automatically or are disposed of by the office force without actual action by the industrial accident board.

*New Jersey.*—You, of course, recognize the fact that New Jersey is not as large as New York, and also that we do not require reports of any accident causing less than two weeks' disability; and having this in mind you will more fully understand why we have received about 9,000 reports during the nine months of the present fiscal year. During this time there have been about 200 petitions filed for adjudication. This represents only 2 per cent. As stated above, I do not know that any of these 200 petitions had reference to cases where agreements had been entered into; but assuming, for the sake of figures, that there might be 1 in 20, the percentage asked for in your letter would reduce to two-tenths of 1 per cent. Personally I think that figure is even less than that.

In the State of New York the percentage of direct-settlement cases which came on for hearing, either upon recommendation of the claims examiner or by complaint of the injured workman, was about 20 per cent. This is a high percentage compared with the average in other States. None of this class of cases were included in the 1,000 test cases which I examined. At the present time the commission, at my request, is completing an investigation of each of the 1,000 cases which I selected, and within a short time I shall have a report upon each case which will give the total amount paid under the direct-

settlement plan and the total awarded as a result of the rehearing. These figures will fully justify everything which I said in my report to the governor in condemnation of the direct-settlement plan. They will make a very interesting and instructive exhibit. In addition, the industrial commission, at the request of the governor, is investigating all direct-settlement cases settled pro forma since 1915, and is granting rehearings when necessary. The additional payments to be made as a result of these rehearings will, I am sure, total a huge amount.

An interesting feature of my investigation was the discovery that the most serious cases of underpayment occurred in the metropolitan district. This, I believe, is due to the fact that the workingman in the outlying districts is more familiar with the compensation law and has more persons interested in seeing that he receives the full protection of the statute.

I am firmly convinced that the settlement of compensation claims directly between employer and employee should be abolished in every jurisdiction. I believe that an investigation in any State will show that the claimants are underpaid. The workingman can not cope with a trained insurance adjuster.

The most serious defect in our present compensation scheme is the fact that in a great majority of cases the person for whose benefit the law was enacted never has his day in court.

I have considered all of the arguments in favor of direct settlements. To my mind, none of these arguments weigh in the slightest against what Prof. Downey says in relation to full payment of the benefits provided by the compensation law.

The Industrial Commission of New York has worked out a novel system for the adjustment of claims against the State insurance fund under what is known as a "Facts agreed calendar." Under this system, a representative of the State insurance fund and a representative of the claims bureau of the State industrial commission agree on the facts as disclosed by the papers which make up the case, and the claimant is sent notice of the amount he is to receive, no hearing being held. This system enables the commission to dispose of the case promptly. It works to advantage as against employers in the State fund generally. This State insurance fund, however, has several special groups, some of which are made up of individual employers. Most of these employers, or the agents representing them, are directly interested in keeping down the amount of compensation. I have this matter still under investigation and it would not be proper for me to go into the matter in detail before reporting to the governor. I think I can say with propriety, however, that the facts agreed calendar system will be greatly modified as against employers in special groups in the State insurance fund.

A troublesome feature connected with the administration of the New York law is the medical question. Out of the 1,000 direct settlement cases which I examined, the report of the attending physician was missing in 714 and most of the reports filed were misleading. Under the New York law, the employer is permitted to select the attending physician unless the claimant desires to pay for his own physician. This means that in a great majority of cases the physician is selected by the insurance company. The claimant is thus left in a position in which the doctor who treats his wounds and restores him to health later appears as a witness against him when he attempts to secure compensation. One man who has been suffering from a back injury for a period of two years informed me that he had been examined by 32 physicians at the instance of his employer. Not one of these physicians regarded his relations with the employee as confidential. Not one of them would be "his witness" upon a contest. A system which permits your physician to "cure your hurts and kill your case" ought not to be permitted.

An interesting feature developed in connection with the administration of the New York law is the final adjustment calendar. These adjustments cover cases in which the claimant suffers from a permanent partial disability, which may or may not reduce his future earning capacity. In a large number of these cases a lump sum is granted, to cover all future compensation. This system, I believe, is wrong, for two reasons: In the first place, a man receives a considerable sum of money and in a great many cases the money is squandered and the employee is left without the protection which was intended by the compensation law. In the second place, these adjustments often result in injustice to the claimant. I have examined cases where a final adjustment was made before the claimants' wounds were healed, and I have examined others where for a comparatively small sum, such as the amount fixed for the loss of a foot, a man's case is closed, when, as a matter of fact, he will be permanently and totally disabled for the remainder of his life.

An administrative feature which is prone to exist and which can be easily corrected is the delay due to overformal procedure. Probably 90 per cent of those who make claim are entitled to some compensation. It is obvious, therefore, that justice requires immediate action when a claim is presented. Departmental employees are likely to become bureaucratic. I can see no reason why a claim for compensation should be returned because it is not verified before a notary public. Neither should a claimant be held up because his employer or his employer's physician fails to make out and file the necessary blanks. In making these statements I am intending no reflection. I have found that nearly every man or woman taking part in the

administration of a compensation law becomes most sympathetic with the injured workman. I do think, however, that there is a tendency to carry out hard and fast rules which result in delay. I believe the law should work so simply that the deserving claimant could receive compensation almost for the asking.

I have endeavored to make this a short address, touching on but a few of the important administrative features. The views I express have been formed from my connection with the administration of the New York law and the investigation I am now conducting. They will, at least, I trust, lead to discussion before this convention, which, in the end, may be helpful.

## HANDICAPS OF COMPETITIVE STATE FUNDS.

BY F. SPENCER BALDWIN, MANAGER NEW YORK STATE INSURANCE FUND.

[This paper was submitted but not read.]

The handicaps of competitive State funds were discussed incidentally and briefly in a paper presented by the writer at the conference on social insurance in Washington, in December, 1916. The object of this paper is to analyze these handicaps somewhat in detail and to present certain conclusions resulting from this analysis.

The handicaps of competitive State funds are partly external, growing out of the advantages enjoyed by the old-line companies and the tactics which they employ in competition with State funds, and partly internal, arising from conditions inherent in governmental administration of a business enterprise.

Private casualty companies have a great advantage over State funds in their ability to select and reject business with a free hand. A private company may accept or refuse any risk at will. It may get rid of an undesirable risk at any time by cancellation. The State fund, on the other hand, can not reject business outright. It must accept any risk that offers itself, provided, of course, that the premium is paid. Nor can the State fund cancel business at will. Withdrawal from the State fund is at the pleasure of the insured, not the insurer, and, once in the State fund, an employer may continue indefinitely if he does not default in the payment of premiums.

This handicap arises from the very nature of the State fund as a public carrier of compensation insurance. A compulsory compensation law presupposes a State fund. If the law compels employers, under penalty, to insure the liability for compensation, it is clearly necessary to provide a public carrier of compensation insurance for employers who may be unable to obtain insurance from a private company or who may be disposed for any reason not to patronize such a company. The State in creating a system of compulsory compensation insurance is logically bound to establish and maintain a State fund for the protection and accommodation of employers. It follows from this fundamental *raison d'être* of the State fund that it can not be permitted to exercise the same freedom with respect to the selection of business as do private companies. This

necessary limitation handicaps the State fund seriously in competition with the private companies. It is far more difficult for the State fund than for a private company to secure a substantial volume of good business and to prevent an undue accession of bad business.

This handicap can be offset, to some extent, by granting to the State fund a measure of freedom in rate making. Control over rates enables a State fund to protect itself in a degree against adverse selection in the distribution of business as between the State fund and private companies. The State fund by offering lower rates than the private companies on desirable classes of business can hold out an inducement to such business, and by fixing rates somewhat higher than the company rates on extrahazardous classifications can discourage an undue influx of business of this character.

This consideration is the real justification for the exemption of State funds from rate supervision by State insurance departments, as in New York State. The New York State fund, in general, charges rates 10 per cent lower than the manual rates approved by the State insurance department for the use of the private companies. On certain classifications, moreover, the State fund maintains rates that are 10 per cent below the level of the company rates, as the experience of the State fund has shown its lower rates to be adequate and profitable. On certain extrahazardous classifications, finally, the rates of the State fund have been fixed at a higher level than that of the company rates, in order to guard against the natural tendency of undesirable business to gravitate toward the State fund. It is through the use of this rate-making power that the New York State fund has been enabled to develop a loss ratio that approximates closely to the average loss ratio of the private companies. Without such control over rates, the loss ratio of the State fund would surely have mounted in the course of time far above the average loss ratio of other carriers.

Another means of competing for a desirable class of business that has been successfully employed by the New York State fund is the group system. In the beginning, the State fund adopted a plan of special groups which enabled it to attract and hold a substantial volume of large high-class risks, which otherwise would have chosen mutual or self-insurance in preference to the State fund. From an insurance viewpoint the fundamental consideration in creating a special group is a sufficient pay-roll exposure to afford a proper insurance distribution or average. In the beginning the State fund laid down the requirement of a pay roll of not less than \$1,000,000 annually, with approximately 2,500 employers. Later, an additional requirement of a semiannual premium of at least \$7,500 was adopted in order to insure a sufficient premium in the low-rated classes of business, experience having shown that the amount of premium is

more important than the size of pay roll in determining the proper limits for special grouping.

The method of keeping accounts and distributing dividends in the special groups, which is the same as in the general groups, is as follows: Each member of a group is charged an advance premium based on the manual or schedule rates of the State fund applicable to the risk. After each policy period the premium is readjusted in the usual manner on the basis of the actual pay-roll expenditures as ascertained by report or audit. The following charges are then made against the group premium: First, the amount of loss payments on account of accidents occurring during the policy period; second, the amount of loss reserves required to carry all outstanding claims on account of such accidents to full maturity; third, the proportionate share of all expenses for management incurred by the State fund; fourth, the contribution to the legal catastrophe surplus amounting to 5 per cent of the premium. Any balance of the group premium remaining after deduction of these charges is credited pro rata to the members of the group on the next installments of premiums due the State fund.

The chief advantage of this plan for employers is that it enables the members of special groups to obtain the benefit of a favorable experience, particularly of any reduction in compensation costs effected by measures of accident prevention, and thus to secure insurance at the net cost of carrying their own risks, individually if in a separate individual group, or collectively if in a trade group. The plan thus offers to employers a most effective incentive to take measures for accident prevention. The general groups are miscellaneous in their composition, and employers placed in these groups are forced to share the benefit of improvements in safety equipment and organization in their plants with other employers whose risks are inherently more hazardous, or who may have given little or no attention to safety work. It is equitable that employers who are willing to incur large expenditures for the purpose of reducing the hazards of their plants and the cost of insurance should be placed in special groups under an arrangement that enables them to secure a direct return from such expenditures in the form of dividends based on their own experience. It is desirable also that a constant incentive should be afforded to employers to make further efforts to prevent accidents and reduce compensation costs, and such incentive is supplied by the group plan. This plan is thus equitable in principle and beneficial in practice.

The advantage of the group plan from the competitive viewpoint is that it offers to employers a proposition that competes with the attractions of mutual and self insurance. The chief attraction of self-insurance for a large employer is that it enables him to pay his

own compensation costs without contributing in any way to the costs of others, and also gives him the exclusive benefit of any reduction in such costs which he may be able to bring about through better safety equipment and organization. Similarly, the main attraction of mutual insurance for a number of employers insured on this basis is that it gives them the opportunity to share their compensation costs collectively without taking chances in a common insurance pool, and further to obtain the collective benefit of any savings which they may be able to make through cooperative measures of accident prevention. The individual group plan in the State fund offers to large employers the principal advantage which he sees in self-insurance; and, besides this, gives him, at comparatively low additional cost, complete release from his liability for compensation and full catastrophe insurance. In the same way the trade group plan provides for a body of employers the essential advantages of mutual insurance, without its great drawback in the form of an assessment liability. The State fund has thus been enabled to compete effectively with mutual and self insurance through its grouping system.

It may be well to point out here that while the group plan is highly advantageous for employers so grouped, and useful as a competitive device, it is also advantageous for the State fund as a whole and for employers in the general groups. It is desirable, in the interest of security and economy of State fund insurance, that large employers and good risks be attracted into the State fund. Under competitive conditions the large risks attracted naturally toward self-insurance can be secured by the State fund only through some such arrangement as the group plan. The volume of desirable business that has been attracted into the New York State fund on this basis is a benefit to all the policyholders in various ways. The large premium accounts in the special groups, which represent approximately 45 per cent of the total premium income of the State fund, make large contributions to the catastrophe surplus, which serves for the protection of all policyholders. The special groups contribute largely to the expenses in a direct way, and they also help indirectly to lower the cost of insurance to every employer in the general groups by giving the State fund a much lower expense ratio than could otherwise be attained. The extremely low expense ratio of  $7\frac{1}{2}$  per cent for 1918 was made possible only by the presence of the special groups. A favorable experience in the special groups, as a whole, tends to lower the loss ratio of the State fund, and thus keeps the cost of insurance on a lower basis than would otherwise be possible, for in the long run a higher loss ratio would necessitate higher rates. The group plan thus helps to make the State fund a safer and cheaper carrier of insurance for employers at large.

The handicap of a State fund resulting from its inability to reject and select business with the same freedom as can private companies has thus been overcome to a considerable extent in the case of the New York State fund through control over rate making and the system of special grouping.

Another handicap of competitive State funds is found in the activities of the army of brokers and agents who make up the great business-getting organizations of the private insurance companies. In New York State, for example, there are about 12,000 insurance brokers and agents. With rare exceptions these representatives of the casualty companies industriously circulate all sorts of misrepresentations concerning the State fund. Insurance brokers get no commissions from the State fund, and, consequently, are interested to keep business away from it and to discredit it in every possible way. The local representatives of the companies come into direct touch with employers, and the latter, as a rule, lend a receptive ear to misstatements concerning the State fund. The average employer relies upon his insurance broker for advice about all insurance matters. He needs various kinds of insurance besides workmen's compensation—fire, theft, elevator, boiler, teams, automobiles, and public liability. The usual practice is to turn over all this insurance to be placed through a broker. It is very rare for a busy employer to make any investigation on his own account or take any independent action with respect to an insurance proposition. This business practice makes the way of the insurance broker very easy in carrying on the campaign of misrepresentation against the State fund.

Moreover, there seems to be no standard of fair play on the part of the fraternity of insurance brokers in their tactics toward the State fund. In general, they are unscrupulous and shameless in their misrepresentations about State fund insurance. In New York State insurance in the State fund affords an employer complete protection at minimum cost, but employers are led to believe that this form of insurance is both insecure and expensive. Employers are told by representatives of the private insurance companies that the State fund maintains no reserves; that its surplus is exhausted; that it is bankrupt or about to become so; that its policyholders are leaving it; that its policy affords no protection; that it gives no service; that it charges the same rates as the casualty companies; that its policyholders are liable to assessment; and so on, ad libitum. The State fund is unable in most cases to correct these misrepresentations and to place before employers the facts regarding its terms of insurance, its service, and its financial condition, as it has not the facilities for reaching them at first hand. Every misstatement concerning the State fund that is put in circulation travels a long route and does irreparable damage before it can be overtaken by the truth. Sur-

prise is sometimes expressed that the New York State fund has been able to secure only about 15 per cent of the compensation insurance business in the State, although its rates are generally 10 per cent lower than the rates of the competing casualty companies and its policy gives an absolute release from liability under the workmen's compensation law. The main reason why the State fund has not obtained a larger proportion of the business is the competitive advantage enjoyed by the casualty companies through their connection with the army of insurance brokers and agents.

An effective remedy for this heavy handicap on the part of a competitive State fund has yet to be suggested. Even if the State fund is permitted to employ solicitors, the small force which can be put in the field can make but slow headway against the overwhelming numbers of the opposition. The thousands of brokers and agents who serve the companies operate virtually as a unit against the State fund, which is unable to employ an agency force large enough to compete with the enormous field staff of the companies. The employment of agents on an extensive scale by the State fund would, moreover, be a violation of the fundamental purpose of the State fund, which is to furnish insurance to employers at bare cost exclusive of acquisition expense. Something could be accomplished toward eliminating the abuses in connection with the competitive tactics of insurance brokers and agents through sharper control by State insurance departments. A higher standard of qualifications for the grant of brokers' licenses should be enforced, and a closer supervision of their practices in the solicitation of business should be exercised by State superintendents of insurance. A provision of law making it a misdemeanor to circulate misrepresentations concerning a State fund might afford some relief. Such a provision was embodied in the Missouri workmen's compensation bill, which recently failed of enactment. It would be obviously difficult to enforce such a measure effectively, but the mere enactment would have a wholesome deterrent effect.

A further handicap arises from the inability of a State fund to write other forms of insurance needed by employees, particularly employers' liability and public liability. In case of the New York State fund, the coverage under its policy is limited to liability arising under the workmen's compensation law. This limitation is a severe discrimination against the State fund in competition with the stock and mutual companies. It is true that the liability under the workmen's compensation law is exclusive for an employer carrying on a hazardous employment within the State and not subject in any way to the jurisdiction of the Federal statutes or the laws of other States. But liability may arise under the laws of other States in connection with traveling salesmen, and liability at admiralty

may arise through the operation of some vessel, which can not be covered specifically by the State fund policy. Many employers desiring to insure in the State fund are deterred from doing so through the apprehension that some action for damages may be successfully maintained by an injured employee. Representatives of the private insurance companies make effective use of the argument that the State fund can cover only the liability under the workmen's compensation law. Even when all the operations of an employer are clearly within the scope of the law he may, nevertheless, be disturbed by the fear of a suit growing out of some liability not covered by the law. The State fund can not satisfy such an employer by guaranteeing to defend the suit and pay the damages in the event of an attempt on the part of an injured employee to bring action against the employer. In this respect, the State fund will always be at a great disadvantage until it is authorized by law to issue a policy covering any liability at common law, under the Federal statutes, or under the laws of other States which may arise in connection with a workmen's compensation risk.

The inability of the State fund to write public liability insurance operates similarly to its disadvantage. An employer desiring protection on account of injuries to persons other than his employees is unable to obtain this form of insurance from the State fund. Furthermore, as the rates of public liability insurance are not subject to supervision by the State insurance department, it is possible for a casualty company to offer special reduced rates for the public liability on condition that the compensation insurance is placed with the same company. In the case of contracting operations which involve a high hazard of public liability the offer of the low rates for this insurance combined with workmen's compensation may be the decisive factor in turning the business to a stock company rather than to the State fund. The private insurance companies, moreover, may, if they choose, refuse to write public liability insurance at any rate for a State fund policyholder. This form of discrimination is, undoubtedly, practiced to a considerable extent. For example, a village corporation which had placed its insurance in the New York State fund recently canceled the policy, and upon inquiry as to the reason, the village clerk gave the following explanation:

The village carries public liability insurance as well as workmen's compensation. When we transferred our insurance into the State fund the company carrying our public liability said it will not carry this liability unless it had the compensation insurance also. We then tried other companies on our public liability, and not one would give us public liability without having the compensation also.

This situation can be remedied only by legislation authorizing the State fund to write public liability insurance for any one of its policyholders desiring this form of protection.

Still another handicap is found in the restrictions imposed on a competitive State fund by conditions attendant upon the State administrations of a business enterprise. In general, the cumbersome of governmental machinery is proverbial. The operations of governmental bureaus naturally take on a rigid and routine-like character. Checks and counterchecks are developed, with the object of preventing dishonesty, but with the result of hampering efficiency.

The civil service has been found to be a serious handicap in the administration of the New York State fund. The restrictions of the civil service place the State fund at a serious disadvantage in competition with private insurance companies not similarly restricted. The selection and the promotion of employees are governed by rigid rules. New employees must be selected from certified lists of eligible candidates, and the choice is thus narrowly limited. It is impossible, moreover, to promote employees and to increase salaries according to the judgment of heads of departments, which should be decisive and final in such matters; but all promotions and increases must be made on the basis of competitive examination. The *raison d'être* of the civil service, as applied to governmental departments in general, arose from the fact that such departments are not subject to commercial competition and, consequently, in order to keep out political abuses the civil-service scheme of examinations and grades for selection and promotion of employees was instituted. It should be recognized that a State fund, unlike other departments of Government, is subject to competition. In view of this fact there would appear to be no sound reason why a State fund should not be relieved from the hampering restraints of the civil service, which was designed to protect State departments that are entirely removed from the sphere of commercial competition.

Again, the budgetary system in New York State, however well adapted it may be to State departments in general, is not suited to the requirements of a competitive business enterprise such as the State fund. The expenses of the State fund are paid by the policyholders, but must be met, in the first instance, out of the legislative appropriation made for this purpose and then refunded to the State treasury at the end of the fiscal year. In order to secure the necessary appropriation the budget of the State fund must be submitted months in advance of the beginning of the fiscal year. This budget fixes the amounts that are to be expended in minute detail, even to the salary

of each individual employee, and, when enacted as part of the legislative appropriation act, no departure from the narrow limits of the budget is permitted to meet any emergency, however urgent. This method of financing the State fund out of a legislative appropriation is cumbersome and unbusinesslike. No business can be conducted with the highest degree of economy and efficiency under such a fiscal régime.

In this connection the essential differences that distinguish the State fund from the ordinary State department, which have already been noted, should be taken into account as furnishing reasons for exempting it from the rigid limitations of the budget as well as of the civil service. In the first place, the State fund is subject to a competitive check on expenditures which must be kept within proper limits if the business is to survive and develop; and in the second place, it is wholly self-sustaining, all expenses being paid by the policyholders and not by the taxpayers at large. The State fund, therefore, should not be subjected unconditionally to the restrictions of a fiscal scheme designed for noncompetitive, tax-supported State departments. The proper fiscal arrangement in the case of a State fund would be the payment of the management expenses directly out of the premium income, possibly with a maximum limitation of such expenditures to an amount not exceeding a fixed percentage of the premium receipts. This arrangement would impart to the administration of the State fund some of the adaptability and flexibility enjoyed by competing private companies.

A handicap of a different character that militates against the success of a competitive State fund is the prejudice against State enterprises on the part of the average business man. This prejudice is deep rooted and widespread and unquestionably operates to deter many employers from placing their insurance in the State fund, even in the face of lower rates and other attractions. The feeling against State insurance shows itself in two ways: In the first place, the employer who shares this feeling instinctively distrusts the possibility of conducting any business as economically and efficiently through the agency of the State as under private enterprise. He has been trained in the belief that State management is necessarily wasteful and incompetent and requires a thoroughly convincing object lesson to win him away from this traditional view. In the second place, he fears the spread of the idea or principle of State administration of business, if it should prove to be successful in the field of workmen's compensation insurance. He looks upon the experiment with a State fund as an entering wedge of State socialism and is fearful that the success of this experiment would lead to further encroachments upon the field of private enterprise. For these reasons the average business man is instinctively inclined to

hold aloof from a State fund and to refuse it support as a matter of principle.

It may be pertinent to point out here that the proposition of State fund insurance in the workmen's compensation field differs in essential respects from the project of State ownership and operation of business in general. There are certain characteristics of the business of workmen's insurance which combine to render it peculiarly adapted to governmental administration. It meets the tests or standards which have been generally recognized by economists for determining the adaptability of an enterprise to State management. W. S. Jevons, the English economist, laid down four principles with reference to this question which have been accepted by later writers. These tests are: First, "where numberless widespread operations can only be evenly connected, united, and coordinated in a single all-extensive government system." Second, "where the operations possess an invariable routinelike character." Third, "where they are performed under the public eye or for the service of individuals who will immediately detect and expose any failure or laxity." Fourth, "where there is but little capital expenditure, so that each year's revenue and expense account shall represent, with sufficient accuracy, the real commercial conditions of development."

The business of workmen's compensation insurance meets these tests in a conspicuous degree. The operations are of a character that require to be coordinated in a single system to attain the largest measure of economy and efficiency; they follow a well-established routine; the service is performed under the watchful eyes of employers and employees; the business calls for a comparatively small investment or expenditure of capital. The first condition, in particular, applies very closely to the administration of workmen's compensation insurance. Various economies can be attained through the substitution of a single centralized control for the present competitive system. At present there are in New York State about 40 private companies in the field, each maintaining its own independent organization for purposes of safety inspection, claim investigation, and pay-roll auditing. Take the matter of pay-roll auditing, for example. Each company has its staff of pay-roll auditors, who travel throughout the State, crossing each other's routes, visiting regularly the same cities and towns and the same buildings. The waste thus entailed is obviously great. It is analogous to the waste that would be involved in a competitive postal system. This waste, which has been illustrated in the case of pay-roll auditing, extends to the inspection and claim service.

These characteristics of the business of workmen's compensation insurance, which render it conspicuously well adapted to governmental administration, do not hold with reference to other forms of

insurance, such as life insurance, and far less with respect to business enterprise in general. The average business man who looks askance upon the project of a State fund in the workmen's compensation field fails to distinguish between the peculiar conditions surrounding this form of insurance and those of business enterprise in general. The prejudice against State compensation funds, however, even if not well grounded, is unquestionably prevalent among business men and operates as an obstacle to the progress of any competitive State fund.

Finally, the menace of political interference must be enumerated in the list of handicaps of competitive State funds. This menace is always present, and, even if it never passes beyond the potential state of a threatening development to the actual state of political exploitation of the State fund, it nevertheless calls for constant vigilance on the part of the management. There is the danger of hostile legislation, which recurs with each session of the State legislature; the danger of unfriendly investigation, which may be projected under the guise of friendly solicitude for the interest of the State fund; and the danger of political dictation, which may assert itself with respect to the personnel of the organization. It requires constant vigilance to protect the State fund against political interference in its various forms. It is no easy matter to keep politics out of the State fund, or to keep the State fund out of politics. Under present political conditions there is no remedy for this particular difficulty which besets the pathway of the State fund.

In consequence of the numerous handicaps of competitive State funds which have been briefly set forth, competition works most imperfectly in the field of workmen's compensation insurance, and it has failed, consequently, to produce the expected results. In fact, the competitive plan of workmen's compensation insurance, under which employers are permitted to choose between stock and mutual, self and State insurance, has failed in practice, because of the impossibility of securing really fair and even competition between the State fund and the private insurance companies. The disadvantages which attach to the position of the competitive State fund, on the one hand, and the advantages which are enjoyed by the casualty companies, on the other hand, make the competition unfair and unequal. The result of these conditions has been the virtual breakdown of the competitive plan of workmen's compensation insurance. This plan is attractive as a theoretical proposition, for it promises to secure the lowest rates and the best service for employers, to subject each form of insurance to the test of fair trial on its merits, and to bring about the survival of the fittest. In practice, however, the plan has failed to produce these desirable results. It has failed to protect employers in general against high cost and unsatisfactory service; it does not

furnish a fair test of the economy and efficiency of the competing methods of insurance; and it tends to promote the survival of the unfit.

The solution of the problem thus presented calls for concentration of the business of workmen's compensation insurance in the hands of a single public carrier. Until such concentration is effected in some way it is certain that employers will continue to pay extravagantly for their insurance, whether in stock or mutual companies. In New York State the stock companies spent in 1917 on the average 80 cents to distribute \$1 in compensation, the mutual companies spent 74 cents, and the State fund only 20 cents. The waste of stock insurance lies chiefly in the excessive acquisition cost, and the waste of mutual insurance, as at present administered, arises from the needless multiplication of competing small companies. The maximum economy can be obtained here only by the elimination of competition and the centralization of administration.

The desired centralization in the business of workmen's compensation insurance can be brought about either through the creation of a monopolistic State fund or the establishment of an exclusive employers' mutual. In some respects the latter appears to be the preferable alternative. The essential difference between the two plans—monopolistic State fund and exclusive employers' mutual—is that the former is administered as a department of the State government, and consequently is subject to the administrative handicaps which have been noted in the case of competitive State funds, while the latter would be administered as a purely private enterprise, and as such would not be hampered by the difficulties attendant upon the conduct of business through the agency of the State. For this reason the second plan appears to promise the more satisfactory results.

The plan of an exclusive employers' mutual was embodied in the bill submitted to the Massachusetts Legislature in 1911 by the workmen's compensation commission of that State. Provision was made for the creation of a mutual association in which all employers electing to accept the provisions of the law would be obliged to insure their liability for the payment of compensation. The association was to be controlled and financed by the policyholders, and would stand in precisely the same relation to the State as a private insurance company, being subject to the supervision of the State insurance department, but not administered as a bureau of the State government. The only financial assistance extended by the State was to be a small appropriation to defray the preliminary expenses of organization. The first board of directors was to be appointed by the governor, but their successors would be elected by the policyholders. The plan of insurance provided in this bill failed to re-

ceive the approval of the legislature, and an amendment was adopted permitting the private insurance companies to write insurance in competition with the new mutual association. It is greatly to be regretted that Massachusetts did not succeed in launching this promising experiment in exclusive mutual compensation insurance under State supervision, for the experiment would furnish a highly instructive object lesson in comparison with the operation of the competitive plan of workmen's compensation insurance in other States.

The plan of an exclusive employers' mutual possesses three outstanding advantages, as contrasted with the present competitive system: First, it would eliminate the waste of stock insurance due mainly to high acquisition cost; second, similarly it would do away with the waste attendant upon competitive mutual insurance through the needless multiplication of competing small companies; third, it would obviate the administrative difficulties in connection with the conduct of the insurance business through the agency of the State, securing in the scheme of administration the adaptability and elasticity of a private enterprise, as contrasted with the unwieldiness and rigidity of governmental machinery. Incidentally, it may be pointed out that this plan, in contrast with a monopolistic State fund, would not encounter the handicaps arising from the prejudice of employers against State enterprise and the menace of political interference with the administration which have hampered the progress of competitive State funds.

The private insurance companies are so strongly entrenched in the workmen's compensation field that any plan for their exclusion will, of course, meet most formidable opposition. But the interests of employers and employees and the public clearly call for the concentration of this business of workmen's compensation insurance and the substitution of monopoly for competition in this field. In the end the private insurance interests will be forced to yield to that common interest.

Until the logical solution of this problem which has been here presented, through a monopolistic State fund or, preferably, through an exclusive employers' mutual, is put into operation, there will be constant dissatisfaction and complaint and recurrent investigation and agitation for the correction of the evils necessarily accompanying the present competitive system of workmen's compensation insurance.

The CHAIRMAN. The program calls for William M. Smith, member Michigan Public Utilities Commission. I understand he is not present. I will call on William W. Kennard, chairman Massachusetts Industrial Board.

Mr. KENNARD. I presume the last paper is going to be open for discussion later; but, coming so soon after it, I want to take issue with

a statement that appears to have been made by the former speaker that we allow settlements pro forma. As a matter of fact we allow no such settlement pro forma between employees and employers.

In looking over the subjects for discussion which were upon the program as it was sent to me, I found there was a very wide variety of choice given to those who would be called upon to speak.

I presumed, perhaps very largely and perhaps too much, in departing entirely from any of the subjects which were given there. I did it because there have been some inquiries made—and by some, I believe, possibly who are here—with reference to how the work in Massachusetts is going on as to the rehabilitation of those who have been industrially injured.

As perhaps some of you know, if not all, we have established in Massachusetts I think the first—in fact, I know the first in the country—system of vocational training, under the supervision of the industrial accident board, whose duty it is to attempt to get back into industry those who have been injured and who have lost their stride. I have therefore taken the liberty to depart altogether, as I say, from the subjects which were put on the program for the purpose of making a very few comments upon the work of our vocational education. It is a live subject in that, I think, all industrial accident boards of the country are looking forward to work of that kind. I think, perhaps, before you get through hearing my paper you will find that it is not a very difficult thing after all. I must apologize to Dr. Meeker and all of you for reading this paper. It is not in print, and none of you have seen it, I presume.

## REPLACING THE INJURED MAN IN INDUSTRY.

BY WILLIAM W. KENNARD, CHAIRMAN MASSACHUSETTS INDUSTRIAL ACCIDENT BOARD.

As you are perhaps aware, the Industrial Accident Board of Massachusetts has attempted a practical program of rehabilitation of those injured by industrial accidents. The matter had been discussed for some years, and finally, in 1918, an appropriation of \$10,000 was made with which to start the work. In October of that year a director of the work was selected and a study begun of the problems involved, with the result that a number of cases have been handled specifically and successfully, in addition to the more comprehensive study of the situation which has been made.

In the outset it was soon decided, in view of no sustaining appropriation for a regular retraining program, that the work must be reduced to a very definite attempt at replacement in industry, based upon specialized training for a particular job, and, of necessity, fitted very closely to the man.

In other words, the program was not one of general education to broaden the mental vision of the handicapped man, but was rather designed along lines of finding the particular niche in industry where the injured employee could regain quickly his earning power and become an industrial asset rather than an economic loss to the community.

It was very soon learned that no monograph system of numbers or card index of jobs open for persons with various classifications of injuries could be resorted to with success, because of the complex problems which must face any attempt to work with a man who, perhaps, has already been many years in industry. The educational program could not be broad like that used in schools, but must be narrowed by the forces within the man, and the forces without that might influence him, which would, in a measure, react upon the injury; for instance, the man's habit of living, his proximity to street cars, his home life, his industrial proclivities and history, the attitude of labor unions to particular occupations, the attitude of employers, the man's mental characteristics for training or lack of ability to be trained, his cooperative desire, etc.

It would be a long story to go into the many surprises which have come up in the work; but perhaps a brief reference to specific cases

will bring out thoughts to your mind very much better than I could give you in general terms.

One of the cases that first came to our attention was that of a young man engaged at the time of his accident in war work in a very large factory. The man was an athlete, had won practically every swimming race he had ever entered, and had saved several lives. His left arm had to be amputated above the elbow. A job was secured for him, and afterwards an artificial hand of the very best make supplied; but he was morose, out of sorts, almost rebellious, and would not or could not make good in any job in which he was placed, and, of course, blamed the entire failure upon his accident.

By friendly cooperation of the superintendent in one of the departments, combined with some inventive skill, it was decided that the best way to reach this man's efficiency and rehabilitate him would be to encourage him along the lines of his previous athletic prowess. An aluminum swimming wing was invented, which was attached to his arm, and with it he very soon became again an expert swimmer and saved the life of another person. He took a renewed interest in his remaining powers to such an extent that he became a most valuable employee after being trained to use his right hand, and is now an instructor in the vestibule school of the factory and an inspiration to every employee.

Here the question was not so much one of disability of body as inability of mind to direct the body; and this inability was removed by the sympathetic touch of a directing hand fully aware of the psychological reactions resulting from an accident. In passing, we may state that in our entire experience this has been the hardest problem to deal with—that is, to get the full, earnest cooperation of the man himself—and I mention this case because in it lies the germ of any successful effort along this line. The director, or whoever is in charge of rehabilitation programs, must go directly to the point to get the earnest cooperation of the injured man. Without it nothing can be done, and with it what seems impossible becomes almost easy in practically every case.

Another case of interest, showing how even the ambitious man falls down after an accident and needs the assistance of some rehabilitating agency, was brought out in the case of a young man who was very anxious to become a locomotive engineer. Failing in this, he decided to do automobile repairing, but while in the vocational school an acetylene tank blew up, the result of which was that he lost his left leg above the knee and his left arm at the shoulder. He could not go back to the school, for our standard vocational educational institutions can not handle the physically incapacitated. They are not established for or adapted to their needs. No employer would take him in his condition. During the shortage of labor in the early part

of 1917 he had secured a job for a short time with a cartridge company; but as soon as help became plentiful he was let out and his optimism deserted him. On his first visit to our office he presented an extreme picture of deplorable despair, with hardly a spark of his old-time vigor for effort left. After applying the army trade tests and other tests used in our work, with a careful study of his history and surroundings, it was found that he was very generally informed and quick at figures. One of our assistant directors recommended and secured for him the opportunity for training in the lay-out room of a large factory, with the result that to-day he is a perfect picture of optimism, backed by successful accomplishment, and is turning out a day's work which is being coined into a man's pay on the same basis as if he were in full possession of every member of his body.

With the growing number of women entering industry we find our files recording numerous injuries to girls; and our vocational department has had to give consideration to such cases. An Armenian girl, who lost her leg above the knee, was working in a very cheap clothing factory under very unfavorable conditions; and even there, as soon as help became plentiful, she lost her position and was without means. In the study of her case it was found that she was very fond of embroidering, and this small start indicated a possible future for her. She was given a preliminary course of training, picking up the lost stitches in work done by blind girls in a factory in Cambridge, and, as her ambition grew and her nimbleness of fingers developed under guidance, she was placed in a fashionable dressmaking establishment, where now, notwithstanding her handicap, she is an economic asset of more than ordinary value, besides being very proud of her opportunities and accomplishments. She has also been carefully instructed in the use of her artificial limb, which is another essential of the greatest importance in any rehabilitation program.

Another case is that of a very attractive young lady, who, in an earnest desire to make money for war savings, attempted to work in a meat market, with the unfortunate result that all the fingers of her left hand were ground off in a meat chopper. She was much discouraged; so was her family; but a program was worked out for her by which a predilection for clerical work was availed of, and under competent instruction a touch system on the typewriter was evolved for one hand, the shifting and spacing being done with the thumb remaining on her left hand. She now has remarkable speed, almost equal to a normal stenographer, and a position has already been promised her, strictly on a merit basis.

In industrial accident cases the men are frequently past middle age and are no longer plastic for training; yet notable instances of

success have been attained. A painter fell from a scaffold, injuring his lower limbs and spine. He was just the ordinary house painter, without education, and apparently without artistic temperament; yet it was found upon a closer examination of his mental characteristics that his stiffened brain had a boyish desire for work of an artistic nature. A course of training was arranged for him in one of the best picture-enlarging plants in the world. To-day he is a satisfied, economic factor in the community, having reached the point where the enlarging of photographs is a new and permanent vocation for him. He has a companion, a boy 17 years old, who lost both legs. He is working in the same plant and rapidly approaching the same degree of success; yet he had been a street urchin, unattentive at school, unappreciative of a job, and unable to satisfy the average employer. Our director found, however, that he was constantly drawing pictures with a pencil and quickly took advantage of this talent to construct from it a definite vocation.

Harry McCormack is a bright young fellow who gave little attention to schooling, preferring to work and shifting from job to job without any definite trade being developed. While working in a leather factory, he lost all but the thumb and little finger of his right hand. After a careful study he was given an opportunity for training in an engraving plant, where he was paid compensation almost enough to give him a living, with a promise of a real trade after he is trained.

William Flaherty is a man far beyond middle age. He was a house painter; fell from a scaffold and injured his hip. His ability to handle the brush was taken note of, and he was given a course in sign painting with the result that he is now ready to do work of this character successfully.

A young Italian boy had one hand cut off and the other badly injured. He was found to be bright and intelligent, but rather lacking in application. His father, at first, like many fathers, wanted to get all of the insurance money, and apparently felt that the boy's condition had given him an opportunity to secure some assets. Under our vocational department a complete change was brought about. The father was educated to the appreciation of the boy's future. The boy was encouraged to the extent that he has a firm ambition to become a teacher. A lump-sum settlement was made, and the fund put in charge of the board. The boy was put in a special school for crippled children, and, while not able to finish the course last year, he applied himself so satisfactorily through the summer that he has recently secured his diploma, and has been placed in the high school. None of his fund has been used; and his father now seems just as anxious to conserve it as he was before to use it, saying that he wants the fund to be used to give his son a

finished education. Unless something unforeseen happens, this education will be given him.

The mention of this case calls to mind the great variety of nationalities that must be dealt with in our work. A careful study of the characteristics of these nationalities is necessary, and frequently the rehabilitation program must begin in the home, with the parents and relatives, to bring about the right kind of a view of the situation. It is found that the wrong kind of sympathy for the injured person is a very dangerous thing and must be eliminated. The injured employee must be taught that he should be independent and not rely upon sympathy for support.

Another case which recently came to our attention is that of a young girl who had crushed her hand. The concern for which she worked is one of the most considerate for its employees in the country and has done much along the line of taking care of its injured employees. With this girl they were unable to make any progress, and our vocational director was asked to look into her case. After talking with her he made a diagnosis of her case; and for treatment, he suggested to her, tactfully, of course, that she go home, manicure her good hand, dress up in her best clothes and make herself look as well as possible and become friendly once more with her "young man." She is now making good. Her trouble was that she had lost standing in her own eyes because of the effect of her injury upon her appearance; and her imagination, followed by neglect, did the rest. When she found that her young man was still willing to take her to a dance she got a grip upon herself once more.

These are a very few of the concrete cases which we have had. As I have recited them I imagine you have said to yourselves that there is nothing wonderful about what has been done, perhaps little more than each of you has already done in cases which have come to your attention in the work of your several boards. In saying that, you are correct. There is nothing wonderful or magical about the work. We in Massachusetts had done work along these lines long before the millions of words and millions of dollars which have been spent in "vocational rehabilitation" were dreamed of. I submit, however, that we were not doing it intelligently, and by that I mean the results heretofore have been the result of circumstances coming to our attention in particular cases and not the result of intelligent and intensive study of a large number of cases.

Vocational training in industrial accident cases generally represents a different and probably more difficult problem than in the case of our soldiers. Our soldier boys are in the main young men without fixed channels in life, without families dependent upon them, and of an age which makes education reasonably possible. This is true in

some of our cases, but generally the problem with us is not so much fitting and educating the injured for a "position" as it is "finding him a job." Important factors in solving the problem are good judgment and common sense; ability to weigh the possibilities of the individual, and to deal tactfully with the various elements and personalities entering into particular cases; a sympathetic understanding of the viewpoint of the injured (not to be confused with the sympathy of a maudlin character already referred to as most undesirable), and an ability to ascertain and appreciate in a general way the possibilities which the industries of the community offer to those suffering disabilities, and the application of that knowledge to the possibilities of the particular case in hand.

Let me say, in conclusion, that we are convinced that this work can be made of real economic benefit to our Commonwealth in saving insurance premiums and reducing the necessity for charitable effort; of a greater humanitarian benefit in giving the unfortunate victim of industry an opportunity to carry on and live to the full life's real purpose of working earnestly toward success as the goal. In doing this we must keep ever in mind the practical side of every question, consider the injured man primarily as a worker and not a drone, as a cog in the wheel of industry and not a load to be carried, as a soul which can be encouraged and uplifted by winning effort and not a broken body to be relegated to the scrap heap. To do this, both mind and body must be carefully trained, each to do its part in life, to the end that the man may acquire that independence and contentment which comes from being able to earn one's daily bread in open competition with his fellows.

#### DISCUSSION.

**Mr. BEERS.** Would Mr. Kennard, for the aid of those of us who came later in the discussion, answer a question on one or two points—points that we would like a little light on? First, the expense of this rehabilitation scheme. Who advanced it? And how large the personnel of his bureau is? That is the first point. And the second is, referring to the quotation from Mr. Holman, if you do not have direct settlement in Massachusetts, how do you determine the rights in the 95 or 96 per cent of cases where there is not any contest?

**Mr. KENNARD.** In the first case the Legislature of Massachusetts made an appropriation of \$10,000 for the department, and it was that amount of money per annum we have had to get along with. We have a vocational director, who has four others in his office. His office in one way pays no attention to the compensation nature of the cases. He is interested only in his end of the work. I do not mean that he plays a lone hand, but he approaches a case without any idea

of whether he is saving compensation or whatever it may be; the case is simply a study in rehabilitation for him.

Mr. BEERS. Do the insurance companies contribute?

Mr. KENNARD. If it can be shown to the insurance companies that it is a fair risk to invest a little money in a case.

Mr. BEERS. Do insurance companies and employers get together?

Mr. KENNARD. The only way in which the insurance companies and employers get together is by agreement in reference to the amount of compensation, what was the weekly rate of pay. That is turned in to our office. Our law compels every employer of labor, whether insured or not, to make a return to our office of every injury, and upon that blank appears the weekly wage of the injured man. In our department the agreement for compensation with reference to the rate is checked up from the report. If there appears to be any difference in amount of compensation which has been agreed upon from that in the report, word is sent out to the parties, and if then they do not agree it is heard by a member of our board. The direct settlement, so called, does not exist in Massachusetts except in the form of lump sums, and we put through absolutely no lump sums in Massachusetts until some member of the board has gone over the case carefully and makes a written memorandum to our board, which is taken up before our full board at its weekly meetings and there discussed and passed if approved; and if we disapprove of it, we disapprove of it without any further discussion. In other words, it runs the gantlet of actual and full discussion by the full board.

Mr. BEERS. You say you apply those aggregate sums per week to the facts that develop on paper. What is the paper?

Mr. KENNARD. The paper I refer to particularly is the report by the employee after the injuries. He is compelled by law to report. If they do not agree, it is immediately discovered upon examination of the agreements, and all agreements—

Mr. BEERS. How do you find how he has lost his leg? Do you read the report?

Mr. KENNARD. Yes; our reports contain what the injury is. Once a man enters into an agreement for compensation he can not be stopped except in one of three ways. His compensation continues for the statutory period until he himself agrees in writing to have it stopped. If he returns to work and earns as much wages as he did before, automatically it may be stopped. Otherwise it can not be stopped except with consent of some member of the industrial board—not a subordinate.

Mr. WILCOX. Do you not understand from Mr. Kennard's paper that he uses the words "direct settlement" as applicable to these arrangements between employer and employee, where they make agree-

ment that compensation is to go at a certain amount? Is that what you mean by direct settlement?

Mr. KENNARD. I do not see how it is feasible to do anything different than we have done. We have in Massachusetts 16,000 reports a month. I submit if any industrial accident commission can investigate 16,000 reports every month and get away with it they can get away with it better than we can. It can not be done.

Mr. WILCOX. If a man sustains a broken limb or broken arm, the only way you can know whether there is any permanent disability there is to make an absolute examination, unless they report the matter to you?

Mr. KENNARD. If a man has a broken arm, he starts in for his compensation.

Mr. WILCOX. If this man does return to work at the same wage and suffers a permanent disability, some permanent impairment to his arm, you will never know?

Mr. KENNARD. We have no jurisdiction over it; if he goes back and is earning the same rate of wages, he is not entitled to it. Our law is a compensation law; and if he is not losing any wages, then he is not entitled to compensation.

Mr. WILCOX. If a man loses his eye, do I understand if he goes back and earns the same wages that he gets no compensation?

Mr. KENNARD. He gets specific compensation. The loss of an eye is compensated at a fixed rate.

Mr. BEERS. Here is a man up in the northwestern corner of the State—perhaps he has been hurt and perhaps he has not—how do you know anything about it? Do you bring him down to Boston?

Mr. KENNARD. We have him checked up in two different directions: First, the man himself, having got hurt in the State—and I submit the State of Massachusetts may present a different problem, because it is a more or less compact State and there are very few people in Massachusetts to-day who do not know there is a compensation act; we have been going on seven years. That man himself is going in all probability to be told by some of his friends, if he does not know it. Then the law compels the employer, whether he had an injury or not, to make report on everything that looks like injury in his factory, and, as I say, we get 170,000 odd a year; and that is under penalty. Within the last six months upon the complaint of the industrial accident board we have brought prosecutions upon employers for failing to make those reports; only one or two or them; and in that case we found it was negligence and not any desire to disobey the law. So we have checked it up in that way and occasionally, with all due respect to Dr. Meeker, insurance companies sometimes tell us about those cases.

Mr. DUFFY. Do you receive the employee's side of the accident? Does the injured worker make a report?

Mr. KENNARD. He makes a report. He goes to his employer——

Mr. DUFFY. Does he make an independent report?

Mr. KENNARD. In our State every employer, of course, has to publish his notice of his insurance by a certain insurance company. Generally the employee will go to the insurance company, and if he does not get just the sort of treatment he is entitled to, then he comes up to our board, and then we take him under our wing.

Dr. KLOEBER. Do you get a surgeon's report on that accident?

Mr. KENNARD. We have a system of impartial examinations, or we examine the man. We do not depend on his physician or on the physician of the insurance company.

Dr. KLOEBER. If you do that in all your cases it is not feasibly possible for you personally, or your commission, to investigate your whole 170,000 accidents. I can not see it. Under your law, a man who was hurt three years ago, to-day in the increased price of wages is receiving a sum that is equivalent to his earnings two or three years ago, but not at all adequate to the purchasing price of that money to-day; is he then relieved of the burden by the insurance company?

Mr. KENNARD. He is in the same position of all the rest of us who have not had our salaries raised in the last four or five years.

There is one thing you have lost sight of, and that is, once a man goes on the insurance companies' pay roll in Massachusetts, they can not stop him without his consent. It goes on automatically.

Dr. KLOEBER. You have named one of three ways that he may be stopped—if he is receiving a sum of money equal to that which he goes on at.

Mr. KENNARD. Then I submit under the compensation law he is not entitled to compensation, because there is nothing to be compensated for.

Mr. ANDRUS. Suppose a man has two stiff fingers that he can not use; he has lost practically the use of them, and the report comes in and says the man is back at work, and he signs a final settlement; have you any way of finding out about that case?

Mr. KENNARD. That sort of case we do not always know about. I am perfectly willing to admit there are cases of that kind in the past—cases in the early administration of the act of that character—but, as I say, we have a feeling now that we do not miss many of those cases, because in Massachusetts they are pretty much alive to the situation of compensation insurance, and they are pretty zealous either themselves or through their friends.

Mr. ANDRUS. That is, they file a claim.

Mr. WILCOX. I was wondering if your law as it is built is not calculated just to disarm these men, just to put them in a position where you do not hear of this thing. The very fact that you do not

pay anything for permanent disability if the man goes back and is earning full pay, I wonder if you are not putting yourselves out of touch with the man?

Mr. KENNARD. I am perfectly willing to admit we do not do 100 per cent justice. I am willing to admit that, and that may be a class of cases where we lose part of our 100 per cent, but I believe at the present time it is reduced to a minimum.

Mr. WILCOX. I do not see how any law that does not take account of the increase in wages can do justice to a man who is injured. We have seen perfectly marvelous increases. We have seen men with one arm going about and earning just as much in these latter days with one arm as they were able to earn with two arms earlier. Now, unless you take account of this change in wages, then how is the man equitably dealt with?

Mr. KENNARD. The only thing I can say in reply to that is this: That our compensation laws are not temporary affairs. I think we all hope that this will continue for many years in the many generations to come. During that time we are going to find the fluctuations in wages and in all things which go to make up our economic system. It is a rather hard thing to say that the employees of to-day may have to bear the burdens of the future, because that is what it amounts to. There may be a downward trend in wages. When that time arrives, our employees in Massachusetts will receive the benefit of that downward trend in the same way in which they are now, to some extent, being mulcted for the upper trend. Let me say to you further that the Legislature of Massachusetts this year recognized the proposition which you have stated by raising the amount of weekly benefit from \$14 to \$16, so that we now pay \$16 for total disability—a recognition of the upward trend of wages throughout the country. That is the only reply I can make to you.

Mr. SULLIVAN. As to the rehabilitation of workmen—because of that feature of your law—their compensation stops when they are rehabilitated?

Mr. KENNARD. Surely. They are the class of cases you do come in contact with. After a man has not done anything for a certain length of time he does not care very much about going to work, and I submit that is applicable to every one of us in this room; if we lay off for a year it is hard to go to work; and it is the same way with the employee.

Mr. SULLIVAN. Is not that a point in favor of a specific schedule? For instance, in a State such as Mr. Wilcox's or our own that man's compensation is fixed and he can be rehabilitated at any time and can go back to work, and it will not make any difference to his compensation.

Mr. KENNARD. That is all right if he has money to do those things. Ordinarily he has not. Somebody has to do it. Is the State going to supply all the money to do it? We are able to handle it in Massachusetts because we have the cooperation of the insurance companies in helping out in the proposition, because they saw some advantage in it themselves to get that man back to industry. I do not want to say we always approach it in a cold-blooded way.

Mr. SULLIVAN. It may be true of some insurance companies, but I would hate to have the rehabilitation of every cripple rest upon the insurance companies.

Mr. KENNARD. I hope I will not be looked upon as a champion of insurance companies. I was chairman of a commission which advocated doing away with all insurance companies in Massachusetts and making mutual companies there; so that my mind is open on the insurance question.

Dr. KLOEBER. You stated a few moments ago that your compensation act in Massachusetts was a permanent compensation act; that it was intended to be permanent. In the next breath you stated your legislature increased compensation from \$14 to \$16. What assurance have you that when the tide turns again that your legislature will not decrease your compensation to where it was before?

Mr. KENNARD. Having served six years in the Massachusetts Legislature, I know in Massachusetts they do not revise downward on any proposition.

Dr. THOMPSON. I did not get your answer in cases of permanent partial disability which are considered for loss of member or part of member or function thereof; he has not completely lost a member or the entire use of—take the finger, hand, and eye, leg, or what not; then whether this man returns to work at the same wage he was earning or at greater wage, or whatever wage, he has with him a disability that is permanent, partially disabled at least—is he paid some definite sum for that partial disability in addition to the temporary time lost that he has been paid for?

Mr. KENNARD. He is not. If he goes back to work and earns less than his wage was before his injury he receives partial compensation based on that difference. If he goes back to work and receives the same wage as before his rights are open to him within the statutory period of 10 years, during any of which time he could come in, and if he satisfies the board that he is unable to earn his wages on account of his injury he goes back on the pay roll of the company either as a partial or total disability case.

Mr. ANDRUS. How are these cases brought to your attention?

Mr. KENNARD. They come there because they are sent in by medical boards who have the cases. The members of our board in Mas-

sachusetts this last year have had approximately 3,000 formal conferences where the insurer and employee came in to talk things over with the members of the board; that is in the course of the year. And those are cases where some question had arisen because there was not a satisfactory adjustment somewhere, and in the course of those cases we get all the grist that our mill can handle.

The CHAIRMAN. This is a very interesting discussion, but we have a lengthy program. The discussion will be continued by Mr. William A. Marshall, chairman, Oregon State Industrial Accident Commission.

Mr. MARSHALL. Mr. Chairman, we favor in Oregon the direct settlement plan by having the compensation boards themselves settle with the workmen directly without any other parties having a direct part in it.

In order to indicate my frame of mind I want to offer this explanation. I have felt that in the several States where compensation is monopolistic many of those problems do not exist. And what I say with respect to some of those questions is not intended as criticism or as a tribute to our board—not giving any particular credit for having that kind of law. As I reviewed the paper of Mr. Connor it occurred to me that many of his problems were largely eliminated through the carrying of the insurance in a monopolistic State fund. Of the different notes I made I found only one that was not—at least the evil was not greatly modified or entirely eliminated.

As to the lump-sum settlement the Oregon law was amended recently so as to give to the commission authority to pay, in its discretion not more than 50 per cent of the present worth of the future payments to which the individual worker is entitled. Our experience along that line has not been extensive, but has been exceedingly interesting, and as I see it now it is really part of this program of restoring the worker as an independent factor in industry.

We have taken this position: That where a workman requests a lump-sum payment we ask that he give us full details as to the purpose for which this lump sum is desired, in order that we may have our representative make an investigation on behalf of the board and satisfy the board to the best of his judgment that the lump-sum settlement asked for is for the best interests of the injured worker; and our experience, although covering only a short period of time, has been exceedingly interesting.

Self-insurance by employers with me is a theory. From the information I have secured it goes back to the same subject; we believe that the State alone should carry insurance. In other words, we believe what the late Mr. Yapple said, that the State should have a monopoly in the carrying of the insurance, and not enter into com-

petition with the insurance companies. The objections that I personally have heard with respect to self-insurance have been indicated here this morning or this afternoon in the possibility and the probability that a considerable number of cases, depending entirely on the attitude of the immediate employer, are not compensated, and the compensation boards in those cases have no way of knowing that the cases were not compensated.

We have had few cases of heat stroke. The general rule has been that if the individual worker making the claim has suffered heat stroke, heat prostration, or sunstroke, caused by some unusual exposure arising out of the employment, he has been compensated.

In Oregon the lumbering industry is the leading industry, and the number of accidents in logging have been a problem for the board; and we have found difficulty in satisfying ourselves as to what cases properly come under compensation and those that did not arise out of and during the course of the employment.

Hernia and back strain: We have not solved those problems and in attempting to follow some uniform practice, particularly with back strain, and it is true also of hernia, we are conscious in some cases doubtless we have paid compensation where the worker was not entitled to it, and in other cases we have possibly denied compensation when the worker had suffered his disabling injury by accident.

As to the manner in which accidents are reported, we feel that there should be independent reports from the employer, from the worker, and from the physician; and have felt that where reports were combined, in some instances at least, it rendered it impossible for the commission to get as complete information as it does under a system where these reports are sent in by the individuals interested.

I am not sure that I sensed the question as to how the second injury cases are disposed of. During our last legislative session, however, an amendment was passed which provides in effect that where a worker is suffering a second injury, and the combined effect of the injury is greater than the injuries separately, that the charge against the employer for the purpose of determining his compensation rate or his premium rate is to be ignored as to all the compensation paid other than what would have been paid if the worker had but the one injury, the purpose of the amendment being to remove the possible handicap of injured workers securing employment because of the employer feeling that he presented a greater liability. Under this form the cost of insurance is spread over the entire fund, and the crippled worker, so far as the subsequent accident is concerned, presents no greater liability than another worker.

What means are used for following up compensation cases? In coming to the convention I visited in California with Mr. Pillsbury,

associate of Mr. French. He suggested with reference to the compensation in fatal cases that it was the intention to make a survey, an investigation of the cases that had been settled in the past with a view of learning what the experience of the individual payments had been. That struck me forcibly, because while in Oregon life pensions are paid to widows, I have felt that we have not solved the problem of dependents in fatal cases. Having in mind illustrations that were offered by Mr. Pillsbury, where in one case a young widow without children would receive as large an amount of compensation as a widow in middle life with a large family, and with greater financial responsibility—I think the suggestion offered there is a splendid one, applying not only to fatal cases but to permanent disability. We have the privilege of attempting to learn what has been the experience of all permanent cases or all partial disability cases that occurred since the law has been in effect, and I think only in that way will we be able to amend the compensation laws so as to distribute the compensation in rough proportion to the need in individual cases.

The CHAIRMAN. It might be well to suggest that members need not necessarily take up all those questions.

Mr. WILCOX. I notice each of these different questions proposed for discussion, but I know how impossible it would be for those who do discuss them to give attention to each of them.

As I suggested while Mr. Kennard was speaking, I take Mr. Connor's position in regard to direct settlement as applying to all this 95 per cent. Did not you, Dr. Meeker? He means the adjustment between employer and employee of cases of temporary disability and total, and then some permanent, and all that class of cases that do not come up for some formal consideration by the boards. That is his idea. I want to freely confess now and here that it is one subject that throws the chill into me. One thing I am alarmed about in Wisconsin is the fact that perhaps we are not checking up those settlements carefully enough. I am just thinking that perhaps they have got some other problem, that we are not discussing generally here, that attaches to the jurisdiction. But, nevertheless, in those States where we hold hearings only on the contested matters and take up other matters more or less informally a large proportion of the cases, perhaps 90 to 95 per cent of the cases, rarely get to the attention of the board in anywise formally. So that what we do is to permit adjustment of those cases between the parties, and we either approve or disapprove or do nothing about it.

Now, there is danger in the situation. I am perfectly sure of that, because of some investigations we have had now and then in Wisconsin. We get the idea that some employers or some insurance

carriers were not settling these cases as they ought to be, just little things now and then leak out; and when we dig in we are pretty sure to find that there have been a considerable number of cases disposed of on the direct-settlement plan between the parties, where perhaps there was some permanent disability attached, or perhaps a man was not paid until he got back to work. There is a great deal of this duress situation with respect to him, and of course that simply indicates a thing that may be more general than what we even understand.

We require this, that in all those cases, first, employers must make reports of accidents. We do not take that from insurance carriers. We do not require in Wisconsin any preliminary agreement between the injured man and employer as to the basis of compensation. I am not very keen for that kind of plan, either. I think employees should be relieved of this obligation of ever signing anything. I think the more things they have to do the more suspicious they are. I think, as a matter of law, the employers and insurance companies ought to be required to see that the right sum of money goes to the employee, and boards ought to hold them responsible for it. This requirement of preliminary agreement, I think, just throws trouble into the machinery. In all these cases that do not come on for formal hearing before the commission, we are requiring that the insurance carrier or employer, as the case may be, shall in addition to the monthly reports which come to us showing just what the status of the case is, and in addition to the final release that comes to us, they must send us the doctor's report; that is, in all cases where there is any permanent disability. That, likewise, has been extended to include all cases in which the disability has lasted for more than three weeks. We have a provision in our law for a waiting period of one week, and if the disability lasts more than four weeks, then the employee is entitled to that first week; and so as to give us a chance to check on that we require these doctors' reports to be sent in in all cases where disability extends beyond three weeks and in all cases of permanent disability. That gives us some check.

We have no limitation statute in our State, no definite statute, and I think perhaps none where compensation has been paid. If compensation has ever been paid, then the man may come in at any time and present his case to the commission. Maybe the general six-year limitation applies, but there is a doubt about that. We encourage all employees in the State, all labor organizations, everybody that is interested in labor to understand that they are free to come to the commission. We do not approve of settlements except upon formal hearings. We have to have something besides the agreement of the parties that it is a fair settlement in order for us to approve. We do not make a practice of approving. They file their

statements, and the record is closed except there is something to call it up again.

Of lump-sum settlements—I am frank to admit it seems to me in times past that members of boards have rather shied at this question of lump-sum settlements—Wisconsin grants lump-sum settlements with perfect freedom. We endeavor to see to it that a man makes the best use of his money, and if we think he can make a better use of it by having it in a lump sum than by having it come along to him weekly, we see that he gets it. We supervise it for the widow; we supervise it for the minor. We have a provision under our law whereby insurance companies may be made to pay it into the bank; and with a minor who wants to get an education we require the money to be paid into the bank, and then paid out to him as he may need it for his own use. We allow a widow a lump sum to clean up a mortgage or buy a home. We usually require security. If we take securities we put them in deposit so that they can not be negotiated.

Dr. MEEKER. How do you supervise the expenditures of the widow?

Mr. WILCOX. We do not undertake to do that. She can have her compensation in the weekly installments that are allowed. If she comes in and makes a showing to us that she has a family that requires more than the regular amount that comes to her, we increase the award to take care of that. We never do that, however, except on some formal hearing. They are brought in with their witnesses and we take the proof. We take whatever course seems to be best suited to find out what her needs are.

Dr. MEEKER. I understood you to say that you attempted to supervise the expenditure of lump sums that are granted. I was asking what procedure you followed?

Mr. WILCOX. Well, I mean with respect to investments and the purchase of homes and things of that sort, and with education, too.

Dr. MEEKER. Just how do you do that with the purchase of a home?

Mr. WILCOX. We have a force of deputies that we put right out. When application has come in for the right to purchase a home we call a formal hearing and have the parties come in, take their proof, and find out what it is they want. We then send one of our deputies out and make investigation of neighborhood, and find out whether it is a suitable place for her to live in. I often go myself; look over abstracts. When I left home Monday morning a woman in Madison, who wanted to purchase a home, came in and told her story and wanted to know if she wanted an attorney to look after her abstract; I said: "We have four or six lawyers over here and you go and get an abstract and some one of us will look over it."

Dr. SCHUBMEHL. Do you take any precaution to prevent their re-mortgaging the house?

Mr. WILCOX. Sometimes we require the deed to be deposited. I have in one or two cases required the deed to be deposited in the bank after recording, just to hold it there subject to our supervision.

Then the question of extraterritoriality will never be settled by courts. We will have so many different jurisdictions getting in on the game that it will never be settled in that way. That, I think, can be settled only by this organization taking some steps to work out a uniform statute, which ought not to be a hard thing to do. There might be a statute worded, a section worded, that we could have written into the various compensation acts of this country that would always protect the situation. I do not think it is a serious matter. I think that is one of the things that we ought to devote ourselves to. I think pretty much all of the State-fund States are able to handle that question much easier than we are in the States where employers pay direct or the liability is discharged through an insurance carrier. Wisconsin has just adopted an amendment which is calculated to reach the situation if we can. This matter was forced on my attention at a conference held in Washington, when the Federal Government was trying to work out a plan for the rehabilitation of soldiers and sailors, and also to take care of the soldier's compensation.

The question came up there as to how could they prevent the discrimination against the disabled soldier; how could they protect these soldiers against discrimination on the part of employers in the various States. We knew it was going on in Wisconsin. We had already made an investigation into several cases where they were actually discriminating, particularly against one-eyed men, because our law at that time provided compensation for total disability for the loss of the second eye. There was always serious doubt as to whether, under a statute which allowed, say, 320 weeks for loss of an arm, as it is in Wisconsin, an injured workman who loses the other arm receives 320 weeks' compensation, or is he paid on the basis of permanent total disability? We rather thought that his liability was limited to 320 weeks. It was just the commission's interpretation; never had the case go to court, and so could not answer it definitely; but it throws enough of a scare into the employer so that he is concerned about it, and he will be particularly so in regard to eye injuries, because we know that the man who loses his second eye is rendered totally disabled. It is all over for him so far as his industrial life is concerned. The amended Wisconsin act now provides that the employer of every man who loses a hand or arm or foot or leg or eye shall pay into the State treasury of our State—following

somewhat the New York plan—shall pay into the State treasury \$150, and out of that fund the industrial commission is to award a sufficient amount, tacked on to the end of the schedule amount, so as to give that man the full amount of compensation for permanent total disability if he is rendered totally disabled; or if the combined injuries result in wage loss greater than the average, he is compensated under the schedule to make it up, and we have put the eye-injury schedule on the same basis. A man now gets from the employer or the insurance carrier exactly the same amount in case of loss of the second eye as he did in loss of the first; the same with arm and hand and foot; and out of this fund the balance is provided for so as to do justice to the man and save him from going through this chance of discrimination, because employers fear to take him on because they may be obliged to pay on the basis of permanent total disability.

There are some more of those subjects I would like to discuss, but I think I will just quit. Before I quit may I just suggest this—I know Mr. Watson of the Ohio commission has made a careful survey. I do not see Mr. Watson here. I remember that he made a survey of this whole field of second serious injuries in order to determine how they were handled in compensation States, and I am sure if he were here he could give you very valuable information on it.

Mr. WAGAMAN. I just want to ask you a question: Did I understand you in the case of loss of eye or arm or hand the compensation is paid and the insurance company, in addition to that, is obliged to contribute \$150 to a fund, and that fund is held in reserve for any employee who loses another member which totally disables him?

Mr. WILCOX. Yes, sir.

The CHAIRMAN. The discussion will continue. Mr. W. C. Jackson, chairman, Oklahoma Industrial Commission.

Mr. JACKSON. It made me feel a little bad by being informed I was expected to read a long essay. It made me feel a little bad when I received this program and picked it up and I saw in large letters "Round table," and I just thought that my former experience in round table did not require a long essay or much else. Consequently I supposed that we had come here simply in an informal way to discuss these matters that were considered of most interest to the public commissions.

I have been very much interested with all these discussions that have gone on, and I came here for the purpose of learning, not to teach, because I realize that we are in a position down there to get a great deal of information and valuable information by attending a body of this kind—a body composed of intelligent men.

The first question that I have been somewhat interested in is this question of direct settlements. I want to say about that our law authorizes direct settlement when the commission shall deem proper and when it is in the interest of justice. The law states that in the interest of justice they may commute it to any lump sum or partial lump sum, but these adjustments must be approved by the commission before they can become effective and they must comply with the law. In order to do that we have a blank that we send out which is sent in by both employer and employee. When we get that agreement back we investigate it. We investigate to see whether or not it is in the interests of justice and whether it is in the interests of this party; investigate to see what are the habits of the man, whether he is a man competent to handle that amount of money, and what use he is going to put that money to when he gets it. We have all these matters before us there and when the matter is before us we make a thorough investigation. If he is a man with a large family and no home, then we encourage him in making a sufficient lump-sum settlement to enable him to get a home for his family. We help him if he is a cripple—a man who has lost a member and can not get along very well without it. But that would come under the head of lump sum.

In this lump-sum proposition I want to say to you that we have more applications for lump sum than any other applications we have, and we especially have applications for lump sum where they get a lawyer in. I suppose if I were back in practice I would be in the lump-sum business, too. I remember a petition the other day where there were eight lines there in the interest of the man and then two pages for the lump-sum settlement—two typewritten pages, single spaced pages, showing where the man should have a lump-sum settlement. When we came to investigate we found all this fellow had done in this case was to present a petition for lump-sum settlement after award had been made, and the law said to this man, You are entitled to such an amount of money; and he wrote that he had contracted with this man for 25 per cent of what he got. Fortunately under our law no fees to lawyers can be paid without approval by the commission; and I can only say we do not approve fees to the proportion that contracts show. We have had to cut down the lump-sum settlement; some of them get very large. A man who would get \$5,000 under our old law now gets \$9,000. So you see the difference. It is quite a sum; and over 40 per cent of our injuries come from the ore fields. We are quite an ore-producing State and those employees are all high-priced employees. The fact is, I do not know of any low-priced employees any more. Those fellows have always been high-priced; so we have to watch those things very closely.

Now, that is where the self-insurance proposition comes in. We have about 300 men in our State who are carrying their own insurance. Under our law there are three ways of carrying insurance, but this is a matter absolutely within the discretion of the board. There are some of those large oil companies that present objections there that have as large assets as some of the bond companies, and consequently it would seem to be nonsense to require them to give security. But I want to say to you gentlemen, as a matter of information, that out of those 300 self-insured we have never had one default in the payment of compensation. They give us less trouble, 10 to 1, than the insurance companies. You take those large oil companies—the majority of them pay their employees full wages during the time of injury and pay their doctor's bill. They are the men who send in those agreements. If a man get \$125 a week or \$150 a week or \$200 a week, those agreements come in proportion, and they agree to pay him wages continuing during his disability and to pay his doctor's bill. The vice president of the Standard Oil Co. told me that, aside from the humane part of it, that was the best business policy that they could pursue. They have men with them that have been with them 20 and 40 years, and they study their interests, and it is cheaper to pay them when they are injured and pay their doctor's bill and put them back into position to look after their business, than to break in a new man and depend on his having the same ability to carry out their work that the injured workman has; and at the same time it makes him loyal to their interests.

So, gentlemen, we are not discouraging self-insurance. Of course, we have a great many coal mines in our State which carry their own insurance. They can not get insurance; no one will bond them, so we have to carry them anyway. But it would astonish you—when we first organized there we thought more accidents would come from the coal fields. The large percentage of our accidents come from lead and zinc; more accidents come from one county where lead and zinc is mined in our State than from all our counties where coal is mined. Our last report shows it.

Here is a subject we have a great deal of trouble over, and that is the determination of hospital fees. The first year after we organized, when we made our report we discovered that 90 per cent of the compensation that was paid out was paid for medical and hospital fees. I thought that was going pretty strong. I knew the doctors were drawing pretty heavy. So I picked up the Iowa report and saw what they did, and I saw that theirs was 35 per cent—35 per cent against 90 per cent. Then I began to examine some of the other reports and I said to our fellows: "This won't do; got to get down on those doctors somewhere." Undoubtedly in our State there are a

great many doctors who get out in these new towns that spring up that could not make a living anywhere else. One fellow sent a bill in for 15 days for \$1,440. I said to him, "How long have you been practicing medicine?" He said, "I have been practicing medicine three years, sir."

The commission has made a rule that first it is the duty of the doctor to present his bill to his employer and the insurance carrier. If they refuse to pay, then he fetches it before the commission and asks to have it reviewed. We then give notice and have hearings and take what proof is necessary, and of course we have our medical adviser and we take his advice a good deal. He goes over these matters first. But we have a great many contests over that class of business, and still they are very high—the per cent. It was high last year and still going to be high. Some of those doctors say to me, "I am not going to let one of those little boards fix my fees." I said, "You are right; I am glad of it." The hospital bills have gone up very high; charge \$35 and \$40 a week for them now. The nurses charge \$7 a day and their board, and nearly all of them want a separate room and one or two special nurses. I think this man that sent his bill in for \$1,440 had three special nurses.

Here is another question: Just one more question and I am through—that is the hernia proposition. We were unfortunate enough to start to follow a rule laid down in the State of Washington and we have never got out of that rut. But I am going to say to you, if the State of Washington makes a different rule and the legislature changes the law, they have left us in a devil of a hole. There is just one question of hernia that we want to get some information on: Can a man who had an accident that exaggerated or accelerated an existing hernia receive compensation? Some States have so decided and some have not. Pennsylvania, I think, so decided. I would like to get some information on it, as I have a case of that kind pending now.

Dr. SCHUBMEHL. Will you kindly ask that question again.

Mr. JACKSON. Can a man who had an accident that exaggerated or accelerated an existing hernia receive compensation under the law?

Dr. SCHUBMEHL. Does your law provide for existing hernia?

Mr. JACKSON. No; our law does not provide for it.

Mr. KENNARD. In Massachusetts they do get it, and they are the most troublesome cases we have to deal with.

Dr. DAVIS. What do you do with the accidents due to horseplay? What about your accidents that occur to and from work? Are they compensated?

Mr. JACKSON. Well, I had a case recently where some miners during a lull in work were sitting around a fire and one of the workmen wandering along over the ground picked up a piece of dynamite

and threw it into the fire, cutting it open, and the cap blew out and put out the eyes of one of the miners who was sitting around the fire. I wrote the opinion in the case and denied that man compensation. That is the first case that has just been appealed from our division to the supreme court. It is a pretty close question, but that brings in practically the question that you ask. Now, I found an opinion in New York almost similar to that, and also one in the State of Nebraska. As a general rule of law a man is not entitled to compensation in horseplay, but in some questions——

Mr. SULLIVAN. He is, in Minnesota.

Mr. WILCOX. Do not they deny compensation in cases of horseplay when the man that is injured is injured in horseplay? How do you leave out this fellow that was sitting about the fire minding his own business when he sustained this injury, when it was the other fellow that did the horseplay?

Mr. JACKSON. At that time he was not doing any act to further his employer's interest. That brings in that whole question which was discussed this whole morning, but which I know very little about.

Dr. KLOEBER. He was on the premises of his employment?

Mr. JACKSON. Yes.

Dr. DAVIS. About seven weeks ago I had to take care of a man who had a fracture in his lower tibia. This fellow was working, and a fellow came up and slapped him on the back, and they got scuffling, and in the fall got this fracture. His employer maintains that he is not entitled to compensation due to the fact that he did not receive it out of his employment. That point I want to bring up to get some information about it.

Mr. JACKSON. I can tell you more about that when my supreme court passes on my case.

Mr. BEERS. I will address myself to only a few of the subjects that are suggested as possibly ones of interest to-day. But before doing that, before taking up one or two I had in mind, I might say just a word or two about this matter of horseplay.

It has always seemed to me that you can solve a good many of the problems by occasionally reading the act and then applying a little horse sense, and possibly a little of the horse sense that has been developed by others. I think you will find in every act that it says that the injury must be one that arises out of and in the course of the employment. The employer, it is generally conceded, is not the insurer of this man's life and well-being against all sorts of hazards; but that even though it arise in the course of the employment it must be from something which arises out of the employment.

Now, I suppose there is no real essential connection between the desire of an employee to fool and any operation connected with the

running of the industry, and therefore the workman is not protected, as I understand the law, from any result of horseplay, for the simple reason that it is not an operation of the employment. He simply happens to be struck by the horseplay there instead of by the horseplay of somebody on the street. That has been the decision of certainly a good many of the supreme courts, and it seems to me at least to be entirely consistent with common sense.

On that subject of hernia we will all agree that hernia is a most troublesome sort of critter, but at the same time theoretically it is simple enough. I suppose all of us flatter ourselves that we are perfect specimens of humanity, but, taking humanity small and large, we must say that we are a sort of scrap lot, and the compensation act takes us as we come, and if it takes us with hernia the industry must still stand the results to the man, even though they are greater than they would be to a theoretically perfect man. I understand that is the rule in many of the States.

Now, coming to one or two subjects that I particularly wanted to discuss before you. I am very sorry Mr. Connor is not here, and I sort of hate hitting a man when you can not see him and when he can not hit back, and I am not going to hit him much. At the same time there are two or three points in his paper which has been read which did seem to me, putting it mildly, to be exceedingly debatable.

What is a direct settlement? Is a direct settlement in its essentials anything more than this: It is a settlement or an adjustment that the parties make between themselves. It is not put in effect by what is equivalent to judgment, because an award of the board or of a member of the board sitting to make an award is essentially a judgment—it does not rest upon agreement at all. Now, a direct settlement rests upon an agreement, an agreement between the parties. But it is not the old-fashioned form of compromise by which one man offered to accept \$5,000 and the other man said he would pay \$1,500, and gradually each one would rub against the other and they would settle upon \$2,500. It is not that kind of settlement at all. It is somebody putting into effect on agreed facts the law as it is admitted to be. The workman pays his rent as a matter of course. He makes his bargain with his employer. Now, direct settlement is simply that. It is agreement on the facts; it is an application of the admitted law to the facts. Ordinarily and in 95 per cent of the cases there is not any real dispute. A man earns, we will say, \$20 a week. The law says he shall have, for illustration, we will say, 50 per cent—that is \$10 a week. If there is any doubt about his wages, that is first fixed. When you come to the period of compensation there is probably no dispute. He receives an injury, and he is kept out of work either for 10 weeks or some other period. Ordinarily the thing

will run along very well, and naturally in the same manner that he will pay his rent, etc.

Now, is it not consonant with principle, is it not required by economy of administration, is it not in the interest of good nature between employee and employer, and in the interest of cooperation which is so necessary, that these parties should not be bringing each other into the presence of the judge, or commission, or whatever it may be called, but that they should adjust these matters which nobody disputes amongst themselves? And what simpler method can there be than to have these people united in agreement, which both sign, stating what has happened to the man, and how and what wages he got, and then the law applied, because we will assume there is no doubt about the period that he is laid up, and the law does the rest, and he gets his money and he does not bother anybody. If these people dealt together on an equality, surely that would be an ideal thing. But as this gentleman, Mr. Connor, says in his paper, in case, on the one hand you may have a trained adjuster, and on the other you may have an ignorant man. For that reason the agreement should be scrutinized, and should be scrutinized as well as possible. Now, it is very easy to fool ourselves. A man has a lot of compensation cases; he can fool himself into thinking that he knows all about them. Certainly the man who administers in New York probably never saw either party before. In my district I have exclusive jurisdiction over something between a quarter and a half million men in these compensation matters, and it is rarely I know an employee personally. It is comparatively rare that I know the employer. An insurance adjuster I know simply as an insurance adjuster; and it is perfect nonsense to say that you can supervise these agreements except up to a certain point. It is also perfect nonsense to say that you can have a hearing that is a hearing in anything more than name of 170,000 cases in Massachusetts, or 60,000 or 50,000 in Connecticut, or I don't know how many hundreds of thousands in New York; and when you talk about finding out all about it you are simply playing with words; you can not do it, unless you increase your force 10 or 20 fold.

There are two ways of bringing up a baby. One is to feed him on predigested food; to treat him as though he had no sense, no strength, or no anything; in other words, to baby him. The other way is to aid him, but teach him to rely on himself. Is there any other principle which is consistent with any sort of respect to the workingmen, that is consistent with our method of doing business in this country, than to say to the workingmen, "You must look out for yourselves." That is not saying that he should not receive aid from the commissioner's office or from the commissioner. That is

not saying that he should not receive proper sympathy, but it is, "You must take the responsibility; you are presumed to know the law. We will do everything we can, but we can not put sense into your head, and we won't insult you by insinuating that we have to put sense into your head." And therefore I submit to you that the principle suggested by Mr. Kennard that those people should inform themselves and ought to inform themselves is the principle we must go by. We can not assume we are dealing with a pack of fools.

If these agreements are presented and are fair on their face, is it not about all we can do in the great majority of cases? To be sure when we find we are dealing with a man who has proved himself to be a crook, or who is under suspicion, we must watch him a little more closely. If there is some reason for putting on gum shoes, so to speak, and looking up the case, well and good. You can not simply go babying this man for life and do everything for him which he ought to do for himself. And therefore my claim is, my contention is, with the ordinary uncontested cases, you can get no better system which is practicable and workable and will work more good in the long run—because the minute you give your baby predigested food you have to get splints for his legs—than if you take this agreement and then wait for somebody to kick unless there is some special reason that some injustice is being done. And, then, in your ordinary cases, try them in a commonsense way; let the man come in, let him bring his evidence, let the commissioner cross-examine. Treat the other side with some interest and some fairness. Of course it will have to be varied if one side is intelligent and the other is not. I do not believe that any of those so-called agreed-fact calendars are anything more in their essential safeguards than the voluntary agreement.

I once got a check for \$7 and a few cents from a railroad company. It was countersigned by the president, vice president, the comptroller, and the auditor, and about \$100,000 or \$200,000 worth of time was used, measured by the salaries of the officers signing it, and it seemed to me at the time those men either investigated it or did not. If they were all investigating that they were losing valuable time that ought to be used for something else. If they were not investigating they were simply fooling themselves. Are not these agreed hearings simply beating the devil around the stump—really accomplishing nothing more? Is it not a pretense—not a conscious pretence but nevertheless a real pretense—that they are doing something that humanly they can not do at all? And this agreed settlement business illustrates one point to my mind that most of the things that we fear do not happen.

One of the easiest ways of getting the best of the workingman is on the subject of wages. He does not know what he gets. He

gets \$30 one week, and therefore assumes he got it every week, and forgot he was drunk one week and sick one week, etc., and when you come to figure it out it is \$17.50 and a fraction instead of \$30. The insurance company or the employer has the wage schedule. The only way to get the thing exactly and certainly is to have your clerks go there and examine into the question of wages—something that would be entirely impracticable in the thousands and thousands of cases. And my own experience has been, and I watch them with a good deal of care, that for some psychological reason or what, that the employer is a little more apt to cheat himself on the point of wages, a little more apt to agree on a sum that is higher, than to get the better of workingmen.

I do not believe that there are many men that are ignorant of their rights; that if they are kept out of work or if they can not work they should have their compensation; and the question is easily approached in simple practice in all of the States. Then, when you come to the man who has lost his arm, that is a somewhat cold fact. That appears on the report, of course, on the voluntary agreement. When you come to this partial loss—personally I think that the determination of the partial loss of function is more apt to work against the injured employee than in his favor, because the periods allowed for initial loss of function are always short, comparatively; so that personally while in our State and in most cases I understand they run around between our legs and get the best of us, I do not believe they do it enough so that it is at all worth while to try to bring the man before the judge; and in most cases if you leave men alone, with a little supervision, and American native-born intelligence, and native-born intelligence when that intelligence has been transplanted to this country, will take care of the situation.

I find myself very much out of sympathy with most of those things in New York that are suggested here. I understand that they did uncover a whole lot of things here, and I have no doubt if people are industrious enough they can uncover a lot of things in your State and mine. But this is a practical question, and no matter what practice we may adopt somebody occasionally is going to get the short end of the stick.

So far as lump-sum settlements are concerned, that is touched upon here. It seems to me there are three objects of lump-sum settlements: One is the general desire to get hold of money, and get hold of it quick. One is to bring up a family which requires \$18 when there is only \$8 available; and I do not know of any way of eating your cake and having it too. I do not know of any way by which a large family of small children can have what they need now without losing in the future; and in almost all States the period is a limited one—6 or 10 years—not enough to raise a large family of

small children. And then as to making some permanent investment as on a home and going into business—well, when you to come to a home, you can only supervise it to a certain point. We have not functionaries to send around to hunt up titles or things. We have to get the people to cooperate. Generally the employer will help, and all the commissioner can really do is to see that it looks like a sensible business scheme and to safeguard it as well as he can—sometimes having the title put in the name of a trustee and sometimes following out other schemes. Another object is to go into business, and a good many go on the rocks of business with compensation money as well as with their own money. But, after all, is it not the proper attitude? It is that man's life that has been impaired; it is that man's future that has to be considered; and if the commissioner can see that it is promising and conservative, can he do no better than propose it, and then sleep nights afterwards even if it comes out wrong? He has done his best. So that I do not think we can devise any scheme that is going to be fair all round, but we must adapt it to circumstances that arise.

Remember this, that all of us have simply to do our duty for the moment, and if things do not come out according to prophecy you have lost your case; that is the end of it. Think about something else. There is another thing that I think perhaps you forget. The period is six years, we will say. The children are small. People are getting older all the time. If the money comes in in driblets it will go out and that will be the end of it. It may be very wise indeed to have something in the way of a permanent fund that can be spread over a long term of years; and is not that one of the objects which can be obtained by the lump-sum settlement? It seems to me it can, and that very wise power is given to the commissioner, and that he ought to be able in the great majority of cases to exercise it wisely.

Please do not interpret what I say as indicating any indifference at all to the welfare of the man who is hurt; but we must forget the individual man and think of the system and try not to baby people too much and not to do anything which will decrease his self-respect, his self-reliance; and we must do everything we can to help him look out for himself. The Lord helps them who help themselves.

Only one other point, and that is the subject of medical fees. Of course, accompanied as I am by our medical commissioner, anything you say against doctors simply reechoes, God help you. I know they are a bad lot. I found this, however, that they are, and I imagine it is the same everywhere—that we have good doctors offered for treatment and as witnesses. Of course the attending physician is an important witness; of course, if his testimony is privileged by statute, it does not apply to what he saw but simply

to what was said to him. Of course he is a most important witness. And now we come to the subject of his fees. I do not think myself that doctors care to be thought robbers. Almost all of them have a position in their several communities; they value very highly the opinion of those administering the compensation act. We have in Connecticut a rule which I think is an eminently sensible one. It is this: The physician is to receive the fees, no more than the fees he would receive had he been called by the workman himself, and the workman pays his bills. Now, that is fair. That does not allow your fashionable physician on the fashionable street, dealing with fashionable and rich people, to fix the scale of charges for those who can not stand them. It then becomes a question of fact to be tried in each individual case, and all such rubbish as association fees and what-not, which nobody pays any attention to—why, we do not listen to. I rule them out when they come before me. I try it as you would any other issue of fact. Hear from those who know about such things, and then render your award, and after a certain number of awards you find after a while that you are not troubled overmuch with exaggerated bills; and the thing very largely adjusts itself. If we simply take the act and try to remember we are dealing with human beings on each side, and we want to be fair to both, and use our sense, and try to get along in a fair way toward everybody, and simplify things, and make things equitable in so far as it is in our power to do so, we will get along all right.

Mr. WAGAMAN. With all due deference to our friend from Connecticut, I think he is entirely mistaken on the question of settlements; and without meaning it in any invidious sense, I think every insurance company in the land will agree with him on that subject, because there is not an insurance company or any other business man that would not rather attend to his own affairs when it comes to paying out money from his own treasury than to have a compensation commission pay it out or direct him what to pay out. I know that theoretically it is apparently sound to say that the workingman should be credited with enough business sense to take care of his own interests and that the insurance company should likewise be credited with enough sense to take care of its own interests. But the difficulty about it is that their interests conflict, and where their interests conflict you will have controversies. The interests of the workingman and the interests of his employers conflict, and when they conflict you have controversies; and it seems to me one of the things that ought to be avoided as much as possible in the administration of any compensation law is to avoid controversy wherever it is possible to do it, and particularly between employer and employee. Now, I do not think that you can do that; that you can

avoid those controversies by bringing the parties together and have them try to effect a settlement of their respective rights. Mr. Beers suggests that these reports can be scrutinized and that the commission can determine whether—

Mr. BEERS. Grievance can be scrutinized.

Mr. WAGAMAN. Well, if I understood the proposition it was that direct settlement, as outlined, meant that the employer and employee may get together and they may determine as between themselves the man's wage—and that is not always a simple question. In fact, in our State, where we have a good deal of coal mining in one section, it is a very difficult question.

Mr. BEERS. How do you do it now?

Mr. WAGAMAN. If you will pardon me just a moment. That is a very difficult question in some industries where there are piece-workers and where there are no stipulated day's wages. You get the coal operator and coal miner together, and have them agree upon what is average day's wage, you will have an idea in that of an agreement. Who is the dominating spirit to begin with or where is it—in the employee or in the employer? Why, certainly in the employer in 95 per cent of the cases. He is the dominating man, and his domination will prevail in fixing the disputed proposition. Then you have the character of injury, which is not always easy to determine and if it is to be set forth in the report and they must agree on it, there is controversy again; and so while the report itself may be simple, and on its face it may be fair, it involves a difference of opinion between the employer and employee, and the result of their deliberations is that the injured employee is in the great majority of cases at a disadvantage. It seems to me we have—and I do not speak of it because I feel that our State is better in this respect than many other States—but we try to avoid as far as possible the bringing together of employer and employee and the employee and insurance company, and we do it in this way:

If you will pardon me for just a very short time I will try to outline it. We require the employer to file his report; we have the questions which he is required to answer, and he fills out that report and sends it to the commission. The employee, if he needs the services of a physician, is furnished with the physician's report, and the physician is required to send his report answering certain questions. That is filed with the commission. If there is disability for three weeks, and we have two weeks waiting period in our State, the employee then makes his claim to the commission for compensation—we will say it is two weeks, and he answers questions on the form prepared, and that is filed with the commission. Those papers are assembled and they go to the claim department. As soon as the

paper comes in it goes to the claim department and the file is complete. You have then the statement of the employer, the statement of the physician, and the statement of the injured employee. If they are in accord on the material facts the claim department, not the commission directly, the claim department, indicates the character of the award with the facts that the case justifies, and brings in the formal order making the award, and the commission simply signs it.

In a large percentage of the cases that occur within a week after the claim for compensation has been filed. Of course after a claim is filed all parties are notified that there is a claim pending. So we do not pay any compensation in our State except upon the order of the commission. Where there is a controversy arising because of disagreement in the statements in those papers, the claim department sets a day for the hearing, and the commission then hears the parties and gives them an opportunity to explain the differences. But in no case in Maryland is compensation paid through the order of the commission, upon the facts illustrated, independently of any getting together of the employee or employer or of the insurance carrier. We do not even permit a compromise after we have made an award. When the commission directs paying an award, and payment of a certain amount for a certain period of time, the commission expects that amount of compensation to be paid. The parties can not get together after that and settle. That seems to be going pretty far. When the payment is made, when the final settlement receipt form, which is prepared by the commission, has been filed, it will show that the award has been complied with or has not.

The CHAIRMAN. I just desire to say that all questions of interest to workmen's compensation are now open and speeches limited not to exceed 10 minutes.

Mr. ANDRUS. Suppose a report comes in that says a man has broken his arm?

Mr. WAGAMAN. We make an award then for temporary disability and direct payments to be made during the continuance of his disability.

Mr. ANDRUS. What do you do to determine whether later he has lost partial use of his arm?

Mr. WAGAMAN. We have another hearing then and modify the award if that turns out to be permanent in character.

Mr. ANDRUS. What do you do by entering the award that the parties could not do without your aid? They have agreed on the facts.

Mr. WAGAMAN. No, there is no agreement on the facts with us.

Mr. ANDRUS. But that is what you enter award on. If they did not agree you could not enter it.

Mr. WAGAMAN. They do not get together for the purpose of solving the question.

Mr. DUFFY. It seems to me that from the worker's standpoint at least the most important reason or objection to direct settlement has not been brought out here—at least has not been emphasized. If I understand it correctly, one of the principal objects in changing from the old employers' liability system to the workmen's compensation system was to remove disputes between employers and employees for damages or compensation for injury from the realm of controversy between employer and employee. Why was that? Not because the worker may not be intelligent enough to understand what his rights are, but because of the unequal position he occupies or the disadvantage at which he is placed. Now, a good deal, of course, depends upon the attitude of the representative of the employer. I will leave out for the time being the professional insurance adjuster. Suppose the employer has a man in charge of that department who feels that he can maintain his own position only by proving to the employer that he is saving him some money over and above what the employer would have in the absence of having that man in the position, and I know from experience that such men do occupy such positions. Here is a workman injured; he has a dispute with this man representing the employer. This man is intent, some of them are—they are not the majority; it is not the majority of those cases in which we have a dispute; it is a very small minority that gives trouble in all States. Now, this man in his arbitrary way takes a position: "Why, you were not disabled for three months; you could have been back here at work a month ago; our doctor says you could." But the workman says: "My doctor says I was not able to work." Now, then, understand, we are talking about direct settlement, not as to what other measures at this stage a workman might resort to. Now, then, if the workman is left to make that adjustment by direct settlement, here is the position he is in: He feels that he is entitled to a month's compensation, which will be 50 per cent or around two-thirds of his wages. Can he afford to lose his job to get that?

All employers, all claim adjusters employed by corporations, do not discharge men for insisting upon their rights, but some of them do. What redress has that man? The mere fact that that is possible, even though it is not exercised very often, is a latent argument which prevents many workmen from insisting upon a just consideration of some small claim for a few weeks' compensation. For that reason I do not think that the direct-settlement system is a good one. On the other hand, the employer can make a statement of facts, an employee can make a statement of facts, to whatever tribunal is established by the State. This does not require any more

trouble on the part of the employer, does not require any more trouble or any more knowledge on the part of the employee, but each party comes with that case to some neutral tribunal at least for supervision. And in that way, without being compelled to punish any of the parties, I think you bring about a system that has produced much better results even in getting the facts from the parties in their true light; and it seems to me from the worker's standpoint that is a most important objection and a very vital one against the direct-settlement plan.

Mr. BEERS. I can make the thing more real by giving a form that is used in our State—a form that is not peculiar to our State, but a form evolved out of such experience as we had. That is a form of voluntary agreement under the compensation act and receives its sanction only when received by the commissioner. It starts out by giving the names of the parties, residence, and place of the injury; not matters very often in dispute. It then states the nature of the injury. Now, in that nature of the injury, if it should not square with the reports that have been made, that could be readily determined. It is extremely unlikely that the nature of the injury will be wrongly stated. If the nature of the injury is such as to be ambiguous, then before it is dealt with letters are written and the man's story cleared up. If, for instance, it involves the loss of finger, that appears; the wage appears. Now, I fail to see how the gentleman from Maryland has avoided the real difficulty in any sort of so-called adjudication that may be made. A man, for instance, is injured in one of the remote mining districts in Pennsylvania. It may be a very complicated issue to find out then how those wages are figured. It is not possible to send the commissioner there or any other competent person to figure out all their complicated methods of getting at wages and what not. In other words, you are fooling yourself when you pretend that you go into those things. Then, when you get these various facts they are signed by the parties, and ordinarily with us the agreement is made only after injury and the period of incapacity is left as undetermined. Then what happens? The employer must pay on as long as the man is unable to work on account of the injury, and if he gets the money, well and good. If he does not get his money they probably both agree that he is able to go to work. In the comparatively small percentage where he does not, all he has to do is to send a postal card, in any language that is written, to the commissioner saying, "I kick; I think I ought to have payment continued." The commissioner then puts it down for hearing and then it is thrashed out. It requires one postal card, and then it puts the machinery of the law into motion.

What is a simpler thing than that? Why does not it meet the situation? It seems to me it does. And we have no pretended ad-

judications, but real adjudications; and the whole question, I submit to you, the whole question, is rather beclouded by the use of that word "dispute." In 95 per cent of the cases there is no dispute any more than I hope the hotel won't have to sue me for my bill. I walk up and have a lot of extras, and I look them over, what the probable charge ought to be, and pay them, and that is the end of it. I do not want a lawsuit over it, and so with this matter.

Mr. BOHLEN. The issue seems to me to come down to a very narrow compass. Under the system that is a so-called direct-settlement system it is the custom for the employer and employee, in one document, to sign a statement of the various facts which Mr. Beers has alluded to. As I understand the so-called award settlement, the difference is that each party signs separate statements of fact. If these statements coincide the award is made upon the basis of the two statements, because of their coincidence, because they correspond to one another. Now, if that is known by the employer—and we must credit him with being a man of intelligence and some little ingenuity—if the employer knows that that is the method and he desires to use compulsion, which Mr. Duffy has alluded to, it is just as easy to induce that employee by the same compulsion to sign an identically separate paper as it is to put the signature to the agreement in question.

So far as I can see there is only one or two ways to set about it. In the State in which I have the honor of being connected with the compensation work—in that State we have, even when the waiting period was 14 days, we had something over 100,000 to 140,000 compensation agreements per year, or an average of between 350 and 400 a day. There is only one or two things I see to do: That is, when an accident report comes out to put a man on the job in each case at once or to handle it as we do, permit these agreements to be executed, see that they correspond; see that they are in the form which we require; then that those payments will continue for the full period or until this agreement be rescinded, terminated by agreement signed by the parties, in which case it must state the reason why the agreement is terminated, or by the action of the board upon hearing by either party. If we had the machinery to investigate every case I believe that it would be the best. If every time an accident is reported we could put a man on the job to see that the wages were adequately computed, to follow up from week to week the man's condition, to report to us if the injury developed worse or better than it is, it would be, I think, ideal.

I want to say that none of those agreements are final during the entire period of the compensation period. At any time an agreement is subject to modification by either—and let me say, in our

experience we have had very few agreements the modification of which has been asked on the ground of misstatement of fact in the statements contained in the answer to our questionnaire. The great majority of our modifications—and there are quite a number—occur in cases where an agreement was executed when the extent of the injury was undetermined.

Mr. DUFFY. Agreeing with you that the employer who could intimidate the injured worker to sign this joint statement could likewise use that same intimidation against such a worker to make a separate statement to accord with the employer's, but does not the direct-settlement plan sent out through the State impress both employees and employers that the matter is in the hands of the employer to take up and adjust with the employee, not for the purpose of reporting to the proper tribunal but for the purpose of making an adjustment?

Mr. BOHLEN. For the purpose of getting the matter before the board I agree with you.

Mr. DUFFY. On the other hand, where separate reports are made, would it not have the opposite idea that they should look to whatever tribunal the State has established, and get the facts to that tribunal, and therefore is not this true? That instead of this plan causing the worker to lose his self-respect or to be babied, as the term is used here, does not the plan of developing in the worker the knowledge and ability to deal right with the State departments, more conserve his self-respect and also develop a more friendly system between him and the employer?

Mr. BOHLEN. I think it relieves him more of any suspicion perhaps that he is being done by his employer, if he has the suspicion. I personally had no idea that this demand for direct settlement would be so easily satisfied as by merely the sole mechanical difference of asking that the agreement should be signed or that the statement of facts should be signed separately by each of the two parties and be regarded as an agreement if it corresponded. I think, to my mind, the difference is so slight and involves so much less extra office work, that if I had the power I should certainly recommend it. What I feared was that the demand was one which would require an immense field force to be on the job to practically adjust for the State compensation board every case by independent investigation which, as you see, in a State of our area and with the immense quantity of diverse industries, it would demand an immense office force, such as the State would not sanction.

Mr. ARMSTRONG. This question of direct settlement has come up. The reason for it becoming a live question is this report that has been made by Mr. Connor in regard to New York. Settlements made

by insurance companies have come under severe condemnation. Nobody here has defended any of the charges made by Mr. Connor in regard to direct settlements. They say, "We do not see any other way out of it than to have direct settlements as outlined by Mr. Beers from Connecticut, and no other way to get along without having direct settlements, as has been explained by him." Now, I say this, that we first have to recognize in regard to this matter that we must give the workmen a square deal. The employer can go and insure his men with an insurance company, and that insurance company is in the game for the money they can get out of it. Do not make any mistake about that. There are no philanthropists in these things at all. They are going to make as good a settlement in their favor as possible, and the workingman is going to come out at the wrong end of the horn every time; and we need not speak very much about that because everybody knows that is what will happen.

The thing that appeals to me is, if it would be possible to have a report from the workman in regard to his position, as Mr. Duffy speaks of, and a report from the employer in the first instance, not a question of making a settlement at all, but get an individual report from each man in regard to the accident at the time it happens, and a report from the medical man as to how severe that accident is. Eliminate your insurance companies altogether; they should have no part at all in this thing. This is a matter that is between employee and employer, and the State board of industrial accidents is the arbitrator. When you have conditions such as that, you will have much more nearly the ideal than is possible in the case where the liability companies are allowed to do business. Now, I speak as one having experience in regard to a State fund compulsory in its character. Liability companies are eliminated altogether. We have absolutely no trouble in regard to this matter. The employer makes his report of the accident and the employee makes his report, and the doctor makes his report. If we have any trouble then in regard to this claim the man is called into the office or our medical officer makes a personal visit to that man, or one of the board may do that himself, and we get then the exact facts.

The report of Mr. Connor in regard to direct settlement has struck a blow at liability companies that they will never recover from. The time is coming, it is drawing closer, when compulsory State insurance is bound to take the place of stock companies. It is a big economic question.

The report in regard to this Ohio State Fund by Mr. Downey and Mr. Dawson has shown conclusively that from an economic standpoint there is no question in regard to which is the cheapest. Now, do not make any mistake—the liability companies, if they are doing

business at 40 per cent, they want to hold onto it, but if the State fund can do business at 5 per cent, why it is better in the interests of the employer, because they do not have to pay very much for the premium.

Now, then, the fight that is going to be on—I am under the impression that this association should take a firm stand on this matter. We have talked about this thing, and I think we should come out and say that this association is in favor of State insurance and that it is the one that is going to do justice to the workman.

MR. ALLEN. I do not intend to occupy much of your time, because I presume the gentlemen conducting this conference are aware that the State I represent here has had so little experience in compensation that I could hardly happen to give you anything entertaining. I want to say that I have reaped considerable benefit from this discussion this afternoon, especially from the representatives from Massachusetts and Connecticut, Mr. Kennard and Mr. Beers, for the reason that Tennessee, in putting this workmen's compensation law into effect has been forced by circumstances to adopt a plan somewhat similar to this presented by these gentlemen—of course on a similar basis. We in Tennessee were compelled to adopt many things that those States of the Union that have had workmen's compensation laws for years have long since outgrown. I remember when I, with others, began to agitate for workmen's compensation in Tennessee, and we were uncompromising in the matter of demanding a State insurance fund at that time. But we soon learned our lesson.

While State insurance has come to be in Ohio and some other States an absolute thing, without which they could not operate workmen's compensation, in Tennessee and other States it is impossible at this time. What we ask, gentlemen, is assistance in administering compensation along those lines that legislative enactment has compelled use to adopt. We adopted the plan of agreed settlements. We are encouraging agreed settlements. Why? Because in Tennessee we have no board or commission for administration of the law. It is placed in the hands of the State factory inspector and the State insurance commissioner. We therefore have asked that there be agreed settlements, but in what way? In the way that the compensation law of the State says they shall be made—that every stipulation of settlements agreed upon shall be in accord with the provisions of the law; that the amount of compensation paid and the manner in which it is paid, even though it be agreed upon, shall be in accordance with the terms of the law of the State. In order to accomplish that the factory inspection department, of which I am the chief official, has put in a common accident report and settlement report. And I believe by this system we are almost able in our

State to secure general universal justice to the employer and employee.

The original accident report is somewhat of the nature that has been mentioned in this discussion; that is, it states the facts relative to the accident, the date of the accident, the manner in which the accident occurred, average weekly wage, etc. We follow it up in all cases, where there is loss of time, with the physician's report, giving the nature, the method of treatment, and probable duration of disability. Then we follow that up with a second report, and later on with other reports if it is necessary, giving the character of the injury and nature of it and other features that give us a line upon it as far as it is possible to secure it. When it is ascertained that it is to be a compensable case we permit and we encourage the employee and employer to enter into what we call a memorandum of agreement to pay and to receive compensation. This must, however, be approved by the court and must be immediately filed with the State factory inspector.

If I had taken to heart everything that I have heard here today I would be discrediting to some extent the new plans we put into operation in Tennessee; I would be afraid of the memoranda of agreement that we have established down there as one of the essential features of workmen's compensation, but I am going to make allowance for the fact that some of the States have outlived these things and want to discredit them, while we are yet in swaddling clothes in our State. We have found that this method is absolutely effective. We have already in some cases recovered the compensation by correspondence.

I remember the first case only a few weeks ago, when a settlement of this nature was reported to the department of factory inspection, in which the accident reports showed that the injured employee was entitled to \$9 a week for 100 weeks for the loss of all his fingers. Well, when the settlement came in, and it was made by one of the three insurance concerns of the country, it showed that they had settled for \$225 and taken a receipt in full. Our law is weak in this respect, that the officials administering it have not very extensive authority and they have to work their bluffs, if possible and wherever possible, and we saw no way of adjusting this matter except by going to the insurance commissioner. I know that name "insurance" is offensive to many of you gentlemen, but we were compelled to have recourse to him in adjusting this sort of proposition, and I said to him: "The character of the compensation law in Tennessee, its good name, its standing among the people, depends on your straightening out and adjusting this intended injury to a workingman. Now, find out what you can do," and he consulted

his law and his authorities, and he came to me the next day and said: "I will revoke this insurance company's privilege of doing business in Tennessee until they correct this," and he put it up to them in that line and within 10 days the party had received \$900. That is only one case, and our action in that case was made necessary from the fact, as I have stated before, that the provisions of the law in Tennessee make it absolutely necessary that we shall operate under these plans of agreed settlements and lump-sum settlements. I do discourage lump-sum settlements. I do not believe in them much. I do not want this to be taken as a reflection on the workingman, but there are not many of them who can get a large sum of money and use it correctly, and when I say that, I speak as a workingman, because I went into my position from the workroom.

The CHAIRMAN. The convention will continue this evening at 8 o'clock, or as near 8 o'clock as the members can gather together. The premier, Sir William Hearst, is announced to give us an address of welcome. It is impossible for him to come, but in his place we have arranged for the Hon. Dr. Cody, minister of education, in this Province, one of the best speakers in the land and a gentleman you will be glad to listen to.

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**TUESDAY, SEPTEMBER 23—EVENING SESSION.**

**CHAIRMAN, GEORGE A. KINGSTON, PRESIDENT I. A. I. A. B. C.**

The CHAIRMAN. It is sometimes said that no man can fill two jobs and do justice to both. We have an exception to that rule in Toronto in the person of a distinguished clergyman in charge of one of the largest pulpits in Canada. I refer to the Hon. Dr. D. J. Cody, rector of St. Paul's Cathedral. He was called recently by the lieutenant governor of this Province to take up the great work of the education department in Ontario. It was thought by many, probably thought most by Dr. Cody's own parishioners, that it would be necessary for him sooner or later to give up the work he was doing in his pulpit, but they did not know their man. Dr. Cody is a living example of the idea that if you want a man for a big job pick the busiest man you can find who is already successfully engaged in a big work.

We were to have had the prime minister, Sir William Hearst, this evening to extend an address of welcome to the convention, but he has found it at the last moment impossible to come, and this afternoon he asked the minister of education if he would come here to-night and say a few words to you. He has just arrived, and I have great pleasure in introducing Hon. Dr. Cody to the convention.

## ADDRESS OF WELCOME.

BY DR. J. D. CODY, MINISTER OF EDUCATION, ONTARIO, CANADA.

I am sincerely sorry that the prime minister of our Province, Sir William Hearst, has been unavoidably prevented from meeting you and greeting you. On his behalf I extend to you, whether you come from our great neighbor land to the south or from our neighboring Provinces in Canada, heartiest welcome to the city of Toronto.

Toronto has been from time immemorial a meeting place. The very name Toronto is an old Indian name that signifies a meeting place. Once, some generations ago, the various tribes who gathered on the northern shores of Lake Ontario, found their best place of meeting on the banks of the Don or the banks of the Humber, on this northern part of the lake, and from that fashion of meeting together of Indian tribes presumably the name of our city has been derived. From that time to the present it has been a happy meeting place for many conventions in our own Dominion and international conventions, embracing representatives of the United States and overseas lands.

On this happy occasion I will give a special welcome to you from the United States. We always knew we had common traditions and that we spoke a common language and that we had common political ideals, however we might fail always to realize these. But in the great world agony, when the issues of civilization were at stake, we found that there was a still deeper bond of union, and that bond of union was manifested in the grim arbitrament of war. Together we have fought and together we have rejoiced in victory. We have won the war, and in a common way now are called upon to win the peace. But the problems of peace and the struggles of peace will take our energy, our unity of methods, our resolution of spirit, and our sacrifice of self just as keenly as did the great demands of war.

It is a great pleasure also to welcome here to Toronto the representatives from the various other Provinces of our far-flung Dominion. I believe that representatives of all, excepting Saskatchewan and Prince Edward Island, are here in Toronto. We wish you were all represented. We are sure that those who are not here in the body are here in the spirit.

It is of very special value, I am sure, to the whole cause of labor, to manufacturing generally, that you should meet together compar-

ing notes and discussing common plans. In our Province of Ontario and, indeed, in all Provinces and States of modern civilized countries, it is keenly realized that the welfare of labor is vital to the prosperity of the State. We have surely learned that industry is linked with humanity, and that there ought to be no antagonism between the interests of humanity and the interests of industry. Industrial organization exists for the sake of humanity, and not humanity for the sake of industrial organizations, and wherever there is a balance of interest between a human being and any form of material wealth the interests of the human being are paramount. Those views, I am sure, lie at the basis of all public welfare legislation in modern States. In our modern progressive State we are very busy on the subject of public welfare.

My own special department is that of education. That deals with the molding of the intelligence and character of the nation. But when the youth grows to manhood he enters into the great arena of labor. There he still is a human being with larger intelligence and a reverent soul and a strong body. He is called upon to be an efficient citizen and to play his part well.

You are bearing a very great part in solving the problem how his humanity may be preserved, how he may be helped and encouraged to be a better contributor to the wealth and the well-being of his nation. There is at the present time, gentlemen, lying, I am afraid, under some of the more reckless statements of agitators, a subtle suggestion that work is really a curse and a chastisement and something that man ought as far as possible to get away from. On the contrary, work is a divine ordnance and work is the greatest means of happiness and work is a blessing and a discipline. Men are never so happy as when they are engaged in congenial work. In fact, the old adage that "Satan finds some mischief still for idle hands to do" is as true in every department of life as when we learned it as a sort of nursery rhyme.

I heard a very good definition of happiness the other day. It was this: Happiness is a congenial and useful job well done. I don't know a better—happiness is a congenial and useful job well done. And work is a joy and a discipline and a means of happiness if the appropriate conditions are fulfilled, and those conditions are somewhat as follows: First of all, that a man should appreciate the value of the particular work he does. He sees it is linked up with the general welfare of his country. But in addition to appreciating its value he finds it to be reasonably congenial to him.

Another condition is, that he is able to do it well. He can do it well only if he is well prepared for it. What he is prepared to do efficiently he can do with joy, because he can do it well.

And then another condition is, that a man shall not labor beyond the fatigue point, that he shall not have too much work to perform in a given time.

And then there are those final conditions, that he works under proper sanitary, under proper hygienic, conditions of light, air, and rest. There should be added some of those moral conditions that help a man to do his best work and to do it with enthusiasm, and among those moral conditions, I venture to think, is the knowledge that if he is injured his dependents will be cared for and he himself will not be cast out as a wastrel upon the street. I think this whole institution of workmen's compensation is one of the most important moral conditions that enter into the making of man's work a joy and a delight and a discipline to himself.

So all over our Dominion and all over your great Union this organization or these governmental organizations have been set up. We in the Province of Ontario have adopted the method of doing this work directly through the State and not through the instrumentality of insurance companies. There are various ways of carrying out this work, but we think that our particular way is at any rate best adapted to the needs of our own Province. Since this workmen's compensation act has been in force the Government has collected through its commission \$9,500,000, and that sum of \$9,500,000 has been distributed to the beneficiaries. We at the present time pay out on the score of workmen's compensation a daily sum of about \$12,819; over \$12,000 a day are being paid out on workmen's compensation account. In the course of a single year there is collected the sum of about \$3,000,000. We have about 40,000 accidents a year—that is in our one Province of Ontario. What an army of casualties there is in the great war of labor against—not against capital, but against the refractory materials out of which wealth must be made. How many fall by the way. And how we should all in organized fashion seek to lend the hand to those who are wounded, who are casualties in the great battle against the forces of nature.

The Province of Ontario pays annually a sum of about \$100,000 toward the administration of the workmen's compensation act. The result is that a large proportion, perhaps as high as 95 per cent or more, of all that is paid in by the manufacturers to this fund goes back to the workmen. The Government steps in and pays the greater part of all the cost of administration.

That is in a general fashion something of what we are trying to do in this Province. It is all part of that persistent effort to-day to put personality on a higher plane than property even, and to recognize that rights of personality are greater even than rights of material property. We feel that care for our human folks makes the greatest claim upon us.

You know to-day we must preach this gospel of conscientious, thorough work up and down the land. There is a most astonishing lack of knowledge of the fundamental principles of political economy evinced on the part of a great many agitators and a good many more serious persons, and in some strange way people think there is an inexhaustible supply of wealth existing—I know not where—upon which some mysterious body called the State can draw. But wealth must be produced by the joint efforts of labor and of capital and of management out of the raw materials which nature supplies. There is no royal road to production of wealth apart from labor—the labor of the head, the labor of the hands, and the labor of accumulations—and the sooner we all begin to realize there will never be a sufficient sum to go round to give increased rewards to the various elements that enter into the production of wealth, unless there is an increased production of wealth, the better it will be for us. Unless there is an increase of production it is almost idle to talk about a happier and saner and better method of distribution.

What you are doing around all these compensation boards in the Provinces, and the States are doing, I think is to contribute a most valuable element to the morale of the worker. You assure him that in case of accident he shall be helped and his dependents shall be relieved from anxiety.

I wish you every possible success in your deliberations. Again may I wish you a hearty welcome to the capital city of our Province. We trust that as the result of these gatherings together the whole work of caring for wounded workmen, the casualties in the battles of peace, may be furthered and developed.

I again thank you for giving me the opportunity of presenting the greetings of welcome of the Province.

Mr. FRENCH. Dr. Cody, our genial and ever-busy and modest president, Mr. Kingston, asked me to say a few words in reply to your address of welcome. I wish that he had taken this very pleasant task because I believe he is especially fitted for it, inasmuch as he is well known to you and this is his home town.

However that may be, on behalf of the delegates to the International Association of Industrial Accident Boards and Commissions I want to tell you that we appreciate to the fullest extent the words that you have uttered. We appreciate the welcome. We have found Toronto to be the city that you have described. It is the first time that this international association has met in a Canadian city. We can assure you it will not be the last. And we hope there will be very many sessions of the international association in this great Canadian land.

I feel somewhat at home perhaps in responding to your remarks, because a number of years ago—I shall not tell you how many—I

was born in New Zealand, so that I am a colonial by birth; and 30 years or so ago I came to California and have valued very highly my American citizenship. As I came to this city and crossed the border and realized there were no forts, there were no soldiers on the line, as there are separating many of our countries unfortunately even at this time, I remembered, just as the doctor has pointed out—our common language, the English law that is the foundation of our system of justice in Canada and in the United States, and all of those matters that come under the one head, as it were, of the Anglo-Saxon race, and which have all been, as Dr. Cody so well pointed out, cemented recently by our blood.

This is the sixth annual meeting of the international association. For nine years past the workmen's compensation laws have been in effect in some countries, and we who have been associated with them from the beginning have watched with pleasure the growth of the compensation idea. We find that in the United States we have 42 out of the 48 States and three of the Territories with compensation laws, and you have either 6 or 7 of your Canadian Provinces—a very splendid showing. It will not be very long before we have compensation universally.

And in conclusion, I want to point out that in my opinion the enactment of workmen's compensation was practically the first move to put what might be termed heart into business relations. Before compensation came, man was not considered as he should have been considered; he was not considered equal to a machine that might have been damaged; have to buy a new machine, but you could hire a new man. That theory has been dissipated, and I think we are all glad that it has disappeared never to return; and out of the start, as I see it, that has been made by our industrial accident commissions and kindred organizations there will spring other avenues of social welfare that will redound to the success and well-being of the people of not only Canada and the United States, but of the entire world.

I wish to thank you again most heartily for your kind expressions.

The CHAIRMAN. The next item on the program is an address by the president. I have not set any particular subject to talk about. Occupying the chair this year it is my prerogative, I suppose, to do as I like, rather than deal with any set subject, so I am rambling all over the lot in a general way in the few remarks which I have to make.

## PRESIDENT'S ADDRESS.

BY GEORGE A. KINGSTON, COMMISSIONER WORKMEN'S COMPENSATION BOARD OF  
ONTARIO.

We meet again in our annual convention in this banner Canadian city of Toronto, and I desire to extend a very hearty welcome to you all, and at the same time to express my own personal pleasure that so many have found it possible to come to Toronto on this occasion.

This association was first organized in April, 1914, shortly before the insanity of Germany's rulers plunged the world into the greatest war in history. Each successive annual convention of the association since that date has been held under the dark cloud of war, but we are glad indeed on this occasion for the first time to meet with the sun of peace shining upon us. Nothing but the clear consciousness of a righteous cause could have sustained our national determination for eventual victory during these trying years of war, and while we give hearty and devout thanks to the God of battles for the allied strength which enabled us to win, we now most earnestly pray that the God of peace may give us national wisdom in these great days of reconstruction.

It was at the second annual convention held in Seattle in October, 1915, that the association widened its scope and became international both in name and purpose, and I am very glad to be able to say on this occasion that every Province in Canada except two and 25 of the States hold membership in the association. The two Provinces referred to, Saskatchewan and Prince Edward Island, have not yet enacted a modern compensation law. Only six States out of the 48—Florida, Georgia, North Carolina and South Carolina, Arkansas and Mississippi—are still under the old régime and continue to deal with their industrial accident cases under common law. Of these six, Florida and Georgia were about to act upon compensation measures at their respective sessions just recently held, so it seems likely that within a very short time a compensation law will be in force in every jurisdiction on the continent north of the Mexican line.

The spread of workmen's compensation in the modern sense since the idea first took root on this continent has been rapid. It was in 1910 that the first law (the Wainwright bill) was passed in New York State. That law was soon declared unconstitutional, but in

the following year several States adopted measures which stood the test of constitutional limitation, and four years later Ontario adopted the law practically as we have it to-day. Now 42 States, 3 Territories, and 7 Provinces, besides the Yukon, have compensation laws, not all alike, of course—in fact, the various laws differ in many important details—but for the most part they all embody the same essential principle of allowing compensation to the injured workman at the expense of the employer without regard to the question of negligence.

It may be of passing interest to note that of all the jurisdictions in the Anglo-Saxon world it was in this Province of Ontario that the words “workmen’s compensation” first found official expression in statutory enactment. Back in 1892, when Ontario passed a law substantially in the form of the English employers’ liability act, the title of the Ontario act instead of the English name was stated to be “The workmen’s compensation for injuries act.”

Time was when the principle of workmen’s compensation was a subject for interesting and profitable academic discussion, but, as will be seen from the rapid spread of legislation above referred to, it has now come to be an accepted principle in most civilized communities so that we need not waste time here on discussion of that sort.

We who have met here, however, are engaged in the administration of our various State and provincial laws, and the matters which will be the subject of our deliberations will be the important practical problems of administration which we meet with in our work from day to day. I sincerely hope there will be a full and free interchange of experience in these matters, so that we may get clearer light and greater wisdom to enable us the better to perform the duties devolving upon us in our various jurisdictions. If you have a question to propound or a special problem on your mind, jot it down and drop it in the question box.

I do not think we will ever see the day when we shall have one uniform type of compensation law, and possibly it is not altogether desirable that such should be the case. Varying systems give greater scope for a realization of what is best, and as we come to understand each other’s methods better we should be able the better to appreciate the merits or demerits of our own system.

It may be said that the various jurisdictions represented here are divided into two great classes, viz, those in which the outstanding feature of the law may be briefly stated in the expression “exclusive State fund system,” and those, on the other hand, in which the employer is made individually liable, and may either carry his own risk or have it taken care of by an insurance carrier.

In the first class are five Canadian Provinces; and, as regards Manitoba, an amendment was passed at the last session of the legislature of that Province making provision for a State fund system. This law needs only to be proclaimed by order in council to bring it into force. Eight States and Territories of the Union are also in this class, viz, Ohio, Washington, Oregon, Wyoming, West Virginia, North Dakota, Nevada, and Porto Rico. No doubt there are ready champions of both systems, and possibly much may be said on the one side as well as on the other; but if we are looking for the system which will give most to the workingman at the least cost to the employer and the greatest benefit to society, I commend for your consideration a comparison of the benefits payable to the injured workmen and the rates chargeable to the employers in jurisdictions of the first group as against the same in the second, or individual liability group.

It is, of course, our function to administer the laws, not to make or amend them. But, while this is true, nevertheless I am quite sure the legislatures everywhere look to the compensation boards in their respective jurisdictions for advice, and in this way to a very large extent legislation may be influenced along lines which are in harmony with the most advanced thought on the subject.

It is to be regretted that there is not a greater degree of uniformity in the matter of the amount of compensation to be awarded in different jurisdictions for like disabilities. We may differ in many comparatively unimportant details of administration, but it is difficult to justify a condition which provides, say, \$1,000 for a certain disability in New York State and only half that amount in a neighboring State, where conditions of living among the working classes are very similar. Recent amendments to a number of the provincial and State laws, induced to some extent no doubt by the increased cost of living, are along lines of more liberal treatment of injured workers or their dependents; but there is room for considerable improvement yet in a number of jurisdictions in this respect. It is a matter of satisfaction also to note that most jurisdictions now recognize the importance of providing full medical and hospital service for injured workers in addition to compensation. No one will hesitate, I am sure, to say that this is as it should be.

The administration of a workmen's compensation law is a task which appeals to the highest thought and imagination which one can bring to bear on any subject. This great modern system of social welfare marks one of the most advanced steps in human progress made in many years; and to be associated as we are, representing practically this whole North American Continent, in this

great field of human endeavor, is a privilege which I am sure we can not prize too highly.

Another important step which one can see looming above the horizon is that relating to mothers' pensions and sickness insurance, and I venture to predict that the day is not far distant when these forms of social welfare will find as strong a place in the minds of all right-thinking people as compensation for industrial accidents now has.

Possibly it is not presuming too much to say that it is not unlikely the industrial accident boards in many jurisdictions will be charged with the administration of such laws once they are passed, and it might possibly be well for this association to give the subject some thought in anticipation of the move which undoubtedly has set in. I notice the New York State Senate at its last session passed a sickness insurance bill by a substantial majority but this was for the time being rejected by the assembly. Many other States have investigating commissions at work on the subject, but once one of the larger States adopts one or other of these measures it is sure to be followed by others in more or less rapid succession, as was the case a few years ago with workmen's compensation laws relating to accident cases.

The program which you have before you for this convention is a fairly heavy one. In preparing it the executive had in mind the great importance of practical discussion rather than wearisome theorizing. We have sought to have as many of the principal papers as possible printed beforehand so as to give more opportunity for discussion and we earnestly hope every delegate present will take full advantage of every opportunity afforded either to state a problem, ask a question, or impart wisdom in any form.

The subject of rehabilitation of the injured worker is one that should command our most careful thought and attention. In the United States, as well as in Canada and Europe, the rehabilitation of the injured soldier is commanding the attention of the very best men whom governments can engage in the service, and everyone recognizes the importance of this. Yet it almost seems as if it needed this devastating World War to bring forcibly to our attention the appalling fact that there are as many or nearly as many industrial casualties every year in our various jurisdictions as the war produced in any one year. Is there any reason why these men, maimed as they are in the great industrial services of the country, should not be taken in hand as war cripples are, and taught some means of livelihood suitable to their changed conditions?

The subject of safety is also one closely related to our work, and while we have not time at this convention to devote much attention to

the subject, we will follow with very great interest, and no doubt many of the delegates in attendance here will attend, the convention of the National Safety Council which is to be held next week in Cleveland. The importance of safety methods in industrial enterprises is not by any means a new development. Moses, the great lawgiver, recognized the importance of this when he passed a law (see Deut. 22:8) requiring that when a house was built a battlement must be made for the roof. While on Moses, one can not help but recall how up to date he was also in the matter of a companion subject—"statistics." The system of tabulation outlined in the first chapter of the Book of Numbers indicates that our friends of the committee on statistics have nothing on their ancient Hebrew prototype. Speaking seriously, we certainly owe a great debt to our statisticians and actuaries. It may be difficult to make a talk on the value of statistics interesting, but without the variety of figures these mathematical gentlemen provide we surely would be like a ship on a great uncharted sea.

We hope to intersperse a little pleasure between meetings. No matter how interesting or helpful the discussions may be, the most studious of us are apt to get fed up if we attempt to sit through morning, afternoon, and evening sessions without any relaxation.

When a year ago I asked the convention to decide on Toronto for this year, I promised you we had one of the finest convention cities on the continent. That may have sounded like a large order, but I hope before you leave you will agree that there was warrant for my promise; and I have the mayor's assurance that the freedom of the city is yours.

I can not close this memo. without expressing my very great regret that our vice chairman, Mr. A. W. Wright, is not here to assist in welcoming you. Those of you who were present at the Boston convention two years ago will recall with pleasure, I am sure, his genial smile and happy disposition, as well as the keen interest he took in the convention proceedings. Prior to his last illness he was looking forward with much interest to your gathering here, but the fates have decreed otherwise, and it is only left to us to cherish the memory of a man whom to know was to esteem most highly.

Since the above was written the grim reaper has again entered our ranks and we are called upon to mourn the sudden passing of one whom we had come to regard as a comrade, Mr. John Mitchell, chairman of the New York State Industrial Accident Board. His very sudden death while just in his prime must have come as a great shock not only to his more intimate associates, but also to a host of friends throughout this whole extent of continent. John Mitchell belonged to a larger world than merely the State he served so well

during the last few years. He will long be remembered as one of the wisest counselors who ever stood for the cause of organized labor. It was my privilege on the occasion of being in New York a few months ago to be invited by Mr. Mitchell to sit in with the New York board at a hearing which happened then to be in progress, and I could not help but note not only his keen perception of the merits of the situation, but also his kindly and thoughtful bearing toward both parties concerned in the case. Mr. Mitchell was to have read a paper here to-morrow on the subject of "Defects in workmen's compensation laws," and he was also to have responded to the address of welcome to-night.

I am sure I speak the sentiments of everyone present when I suggest that an appropriate resolution of sympathy and condolence be recorded in the proceedings of this convention, and a copy sent to the bereaved widow and family.

We can not say and we will not say that he is dead;  
 He is just away with a cheerful smile and a wave of the hand.  
 He has wandered into the unknown land,  
 And left us dreaming: How very fair it needs must be  
 Since he is there.

## ROUND-TABLE DISCUSSION—ADMINISTRATIVE PROBLEMS.

**CHAIRMAN, WILL J. FRENCH, VICE PRESIDENT, I. A. I. A. B. C., MEMBER CALIFORNIA INDUSTRIAL ACCIDENT COMMISSION.**

The **CHAIRMAN**. Our president has alluded to the latitude that belongs to the chairman. I am going to avail myself of that latitude just for a minute before taking up the regular program.

At the convention held in Madison last year a very unfair advantage was taken of me. I was not present and I was elected vice president. When Mr. Lissner, one of my colleagues from California, sent out word you can imagine how I felt, because I had not even asked, I had not even told, Mr. Lissner that I should like to be vice president of the international association. Before leaving San Francisco I was informed by some of my friends that I could stay in Ontario just as long as I liked if I did not take the international association back to San Francisco next year. So while I like Toronto very much, Mr. President—I would like to settle here—I frankly confess I would also like in a little while to return to California, and so I got busy. I will read you a letter here. This letter is from Gov. William D. Stephens, of the State of California. You must not think I had anything to do with that:

**GENTLEMEN:** All the people of California join with San Francisco in hoping that you can hold your next annual meeting in San Francisco.

The State of California is a most hospitable one, and I am sure you will never regret your going there for your next meeting. California has much to show you. We hope for the opportunity.

Very faithfully, yours,

WILLIAM D. STEPHENS,  
*Governor of California.*

In connection with that I want to add my own pressing invitation and also an invitation on behalf of the Industrial Accident Commission of the State of California.

As you gentlemen know, California was one of the first States to adopt a compensation act, and we feel we have done some work in the field and that a convention in California will result in a very large attendance from the Western States, from the States of the Middle West, and I am convinced also of the States from the far East, because those delegates that have never been to San Francisco or California I know want to go there, and this will afford an excellent opportunity next year; and I hope when the committee is selecting the convention city that they will bear these invitations in mind and that the international association in its sixth annual meeting will make San Francisco unanimously the city of the next meeting, because she offers unbounded hospitality, a State well worth seeing, and the only objection I can possibly see to going to California is that a number of delegates will want to stay there and the jurisdictions of the East will suffer thereby.

The program first calls for the consideration of the subject "The larger idea in workmen's compensation."

## THE LARGER IDEA IN WORKMEN'S COMPENSATION.

BY WILL J. FRENCH, MEMBER CALIFORNIA INDUSTRIAL ACCIDENT COMMISSION.

Stock taking is a necessary part of business routine. The merchant needs to know his exact financial status and to carefully estimate his assets and liabilities.

Now that nearly a decade has passed since the enactment of the first workmen's compensation act in the United States, it behooves the International Association of Industrial Accident Boards and Commissions to review what has been accomplished and to see what is contained in the "larger idea" for the future.

If we are frank with ourselves, we must admit that some of our compensation States show a red-ink balance and not one is in sight of the goal that we have a right to set before us.

One of our Western States has a compensation maximum of \$8 a week, which sum, considering the rapid increase in the cost of living and the year of the enactment of the legislation (1915), gives a comparative maximum in 1919 of about \$6 a week. The same holds true of a number of other States. Approximately 14 States have a weekly maximum of \$10, 9 States set the maximum at \$12, and another 9 States average \$14 a week. All living standards of the American family in this day are set at naught by such payments. They constitute an indictment of the compensation standards that should prevail.

The same reasoning applies to the medical, surgical, and hospital treatment furnished, or more frequently not furnished, the crippled workers. Time prevents a detailed look into the situation as it exists. Four States fail to provide any medical or surgical care, a large number of States limit the medical cost to \$100 for each hurt worker, and a still larger group have legislation shutting out the injured after 30 days have expired. Imagine the semblance of a man coming out of a machine, with months of hospital care and expert surgery in front of him, receiving a dole of \$100, or word on the thirty-first day after his injury that he must pay for his own treatment! It is consoling, in a measure, to be able to report that four States have no limit on either time or cost for medical, surgical, and hospital treatment.

On the wrong side of the ledger also can be entered the long waiting period, the exclusion of workers, the elective system, and the confusion as to railroad and maritime employees. Other drawbacks will come to mind.

**A SHORT DEFINITION.**

Thus having taken stock in a cursory way, and remembering that there are a few compensation laws which point well along toward the goal, I come to my conception of "the larger idea in workmen's compensation." If I were asked to define briefly the thought in mind I would state that I advocate restoring the injured worker physically, so far as that is possible, providing him with a living wage for himself and family during such restoration, and, if needs be, reeducating him to take up a new occupation, if he is forced by his permanent injury to change his vocation. In addition, I would provide for the dependent widows and children on a basis of their needs for the future.

**COBWEBS IN NEED OF THE BROOM.**

Before proceeding to discuss proposed ways and means, we need to brush away some of the cobwebs that have fastened themselves on workmen's compensation.

The word "compensation" is a misnomer. No amount of money can "compensate" a mechanic for his lost hand, and it is quite sure there isn't any sum paid by any of the States that will prove the least inducement for any loss to the human machine. We need to either change the word compensation or make it reasonably worth while.

Another cobweb is that the so-called workingman will thrust his arm into gears or malingering to get compensation benefits. The average man, whether he be young or old, or tall or short, shrinks from pain and suffering. He doesn't want a rendezvous with death. This applies to the ditch digger as well as to the bank president. And the same average man will likely receive in compensation, when injured, far less than he can earn at his trade. The sums hereinbefore named do not offer the least attraction for delay in returning to employment. It is undoubtedly true that there are cases when men want to draw compensation longer than they should, but I have yet to find the doctor of the employer or the representative of the insurance carrier who fails to frown at such attempts. Furthermore, the cases of malingering, very much fewer in number than is the popular impression, are more than offset by the workers ordered back to employment before their wounds are properly healed, who do not receive the best surgical care, or who fail to receive all the benefits provided by law.

And still another cobweb is the statement that the worker pays nothing to the cost of compensation. This is a fallacy of fallacies. The worker takes all the risk of modern industry. He faces death

and injury each hour. He, in case of accident, pays directly a substantial percentage of his wages when he receives half or three-quarters of his stipend in the form of compensation. Inasmuch as the cost of compensation is a proper charge in business operations, the ultimate consumer pays the bill, and there are more consumers who work for a living among the wage earners, simply because there are more of them. It is also an error to think that compensation is a form of charity. Nothing could be further from the truth. Each injured man who contributes part of his body in order that industry may proceed places both a moral and a legal obligation on the community he has so served to see that proper recompense is given him.

#### THE LARGER IDEA.

##### I. THE BEST SURGICAL CARE.

First, last, and all the time the workers of the Nation should be surrounded by every safeguard and protective device possible, and the important factor of education in the "safety-first" movement needs an emphasis heretofore unknown. The needless industrial deaths and injuries are a grave charge against the Federal and State Governments. The best thought of the international association should be directed toward larger plans than any yet proposed, so that the gospel of accident prevention may be a living, vital force in our American life.

The injured man who is carelessly or inefficiently treated, either by doctor or hospital management, receives that which is not his due. Not only is he entitled to the very best, but lamentable ignorance is shown by the employer or the insurance carrier who fails to furnish that best. Nothing is more expensive than poor medical and surgical care. It has cost some men their lives, and more men are suffering from permanent injuries than should so suffer. An extra fifty or one hundred dollars paid for expert service may not only save life or limb, but will likely reduce compensation payments many times over.

There should be unlimited medical, surgical, and hospital treatment. Specialists should be engaged for special work. Industrial surgery is now a recognized art of the profession not to be practiced by incompetent men, and should be confined to those whose skill is proved.

A mistake will be made if the surgical lessons of the great war are not applied to the treatment of the victims of peace. There is no doubt these lessons eventually will be so applied, but each State industrial accident commission can hasten the inauguration of the newer and more scientific methods.

Every United States Army general hospital which treats oversea wounded maintains operatives in occupational therapy, which includes, besides handicraft work, physiotherapy, which means massage, passive movements, active movements, medical gymnastics, baking, electricity, and kindred treatments. The skilled surgeon realizes the necessity of putting heart into his work and gaining the confidence of his patient. As in all other human activities, teamwork produces the best results.

### II. COMPENSABLE COMPENSATION.

A protest already has been entered against some of the amounts paid injured men and women. The protest is justified by the doles and the needs. It must be admitted that a minimum and a maximum compensation should be established, because insurance rates would otherwise have no stability. But if the argument of a "living wage" holds good when a man is strong and working, why doesn't it hold good when industry places him on his back, makes him weak, and prevents his working? The average American citizen has a wife and three children to support, and their necessities are unaffected, if any reasonable standard is to prevail, by the incapacity of the breadwinner. If the latter is unable to follow any occupation because of his injury, he should be compensated for life.

Each State industrial accident commission can call on the United States Bureau of Labor Statistics for assistance in determining the amount necessary to maintain the average American family in the American way. This information should be analyzed and utilized for compensation legislation. A minimum and a maximum compensation, graded according to the mouths to feed could range from 65 to 100 per cent of the salary earned at time of injury. It is not right to lower the bare living standard at the time it needs to be maintained. One or two of the States have successfully introduced this graded plan in paying death benefits. A single man in a hospital, provided his expenses are paid, can get along on less money than can a man with four members of his household to support.

### III. REHABILITATION OF THE MAIMED.

A given number of weeks' compensation soon expires. Can a more unfortunate situation be imagined than that of a maimed worker approaching the end of his compensation period without preparation for the future and with a knowledge that his old employment is gone forever? The outlook of such a man is indeed dark. The principle of compensation is violated when such a situation is permitted to exist.

The period of probation between jobs needs to be capitalized for both the hurt man and the community in which he lives. He needs to

be retrained. It is idle to say he should attend to his own retraining. He is despondent. He broods over his physical loss. The inertia that affects us all is his, and the weekly compensation lulls him to continued inactivity. He needs careful and expert and sympathetic guidance, so that his eye may catch the gleam of the brighter day ahead. The State must furnish this guidance, because it is interested in preventing an addition to those who are its wards.

It is my purpose to refer to what California has accomplished to date and to outline the plans for the future.

Special investigations of serious permanent injuries in California from January 1, 1914, to June 30, 1918, laid the foundation for legislation. Long before the enactment of the new law the broad powers of the California workmen's compensation, insurance, and safety act were invoked to do special work for the reeducation of the crippled. There were 700 cases included in the survey as typical of their kind. The classifications of the injuries, the numbers employed and unemployed, the occupations selected, the wages earned, the ownership of homes, the family relations, the means of support, the attitude toward each injury, the general outlook on life, the age at time of injury, and the general averages make up an exceedingly interesting report, copies of which will be gladly furnished by the California commission. Each year several hundred men are added to the list of those who have to seek new ways of earning their livelihoods and the problem is ever pressing.

On July 22, 1919, there came into effect an act passed by the California Legislature entitled "An act to provide for the support of vocational reeducation and rehabilitation of workmen disabled in industry in this State." Whenever a man who leaves no dependents is killed, the employer or the insurance carrier is required to pay into the State treasury the sum of \$350. This and all similar amounts can be drawn upon by the Industrial Accident Commission for the purposes set forth in the title. The commission is vested with full jurisdiction and authority to determine all controversies arising under the act and to make all orders and awards necessary to carry out its purposes.

It is intended to amplify the work done during past months and years. Injuries that appear to be permanent will be given the attention which may prevent their becoming permanent. The lay of ankylosed parts, as a usual outcome, is past.

If the permanency is established, and the resources of surgical skill exhausted, the hurt man will be visited in hospital or home and plans laid for his future. His desire for a new occupation will be ascertained. Undoubtedly the desire will govern, unless all are satisfied of its impracticability. Besides, handicrafts or other useful

occupations will be supplied during the hospital period, with an eye single to the end sought to be attained. Workshops will do their part in the reeducation. The latest contrivances and inventions to replace lost physical members will be secured. In this connection we can all learn from our Canadian friends, whose bitter experience in the war was longer than ours, and whose magnificent efforts in retraining disabled soldiers of war will serve as a guide in the rehabilitation of disabled soldiers of peace.

The time during which compensation is paid will be expended to the best advantage. Technical schools, business colleges, workshops, universities, and schools, and all other sources of training and learning will be called upon to do their share. If there is need of more money for tuition, or to keep the family while the hurt man goes away for his reeducation, it will be forthcoming. If a man should go to the country, a way will be found. Experts will be employed. Already we have ascertained the value of using the services of men themselves permanently injured. The one object is to rehabilitate "workmen disabled in industry." We propose to do that very thing in each instance. Industry will furnish the money, as it supplies the men to be retrained, and the cost may be saved by shorter periods of readjustment. The State will extend the guiding hand, and men anxious to give a good account of this important stewardship will try to sympathetically and efficiently direct this new and all-important part of a well-rounded compensation system.

And this is not all. Each reeducated man needs a position. The purpose is to see he gets it. His old employer may be asked to place him. If that is impossible, other ways and means will be found to crown the period of preparation. A new day is here for the maimed man. He will be well taught when he needs the tuition, and he will realize the economic advantages of having each step planned so that his income will be assured and he can step forward unafraid.

#### A FINAL WORD.

With the three main factors heretofore discussed, and insistence that all wage earners participate in compensation, provided for them under legislative safeguards that will amply secure the payments, my conclusion is that our united aim should be a type of compensation that compensates.

Mr. KENNARD. May I say, in line with the very last remark that you made, that I had with me some of the forms that we use, especially that one you had in reference to a survey—what his family connections were, approaching him from almost any angle which by any chance might offer a suggestion as to what might be done with him. I have a sample with me which I would be very glad to show

any of the members. I am sure we would be very glad to send to any of those interested in it samples for their observation and for such use as they might make of it.

The CHAIRMAN. On the program we have William C. Archer, deputy commissioner in charge, Bureau of Workmen's Compensation, New York. I do not think Mr. Archer is here. Is there anyone representing Mr. Archer or any member from New York or representing the New York commission?

Now, on the program we have Chairman Tucker, of the Virginia Industrial Commission, but he was unable to be present, and Mr. McHugh, of the Virginia Industrial Commission, is here and I will ask Mr. McHugh to come forward and discuss the general topics that we have been considering this afternoon or which have been brought out to-night.

Mr. McHUGH. Our commission is so very recent in its place in the history of compensation that I am afraid I am in no position to say anything that would be of any real value to you. I came here to endeavor to learn something, and I must say that I feel deeply indebted to the gentlemen who have so splendidly discussed a variety of subjects upon matters that were extremely interesting to me, and that I feel will be helpful to us when I go back home.

Our different laws so vary that I do not think any good purpose would be served by our giving our individual experience, to discuss our troubles, because the troubles that concern me perhaps would be those that would be utterly foreign to most of the other members.

We have discussed the matter of agreements, showing at times that it was a highly improper method, and at other times it was an essentially meritorious method. I think that the exponents of both plans were perhaps right and perhaps wrong, because I think that that subject is one that depends somewhat upon the local conditions and upon the support that employers and employees bring to the act and the spirit in which they enter into it. In the jurisdiction of Virginia we have had no difficulty whatever.

The subject, however, that I want to touch upon principally is the question of hearings. When this law first went into effect in the Virginia district our statute provided that the hearing should be had either by the full board, consisting of the three commissioners, or by one of them, and that hearings by deputies could be considered only in the nature of referee's hearing. In other words, the testimony would be taken and sent over to the commission, and then they would have to go through the testimony and reach a conclusion. So in the beginning we reached the conclusion that the commission itself, either by a single member or as a unit body, would conduct all hearings. I mean by hearings those matters that were not the

subject of agreement. Our statute provides that agreements were to be favored. But I would like to say right here that we were peculiarly fortunate, I take it, in the way that this act was enacted. It was the fruit of a joint effort of a commission that had upon it the representatives of employers and the representatives of employees, and also some members of the legislature. It was, therefore, not a perfect act. I am not prepared to say that I have read any perfect act upon this subject anywhere in the country, and we very frankly admit that ours is not perfect. It has in it things that ought to be corrected and that we hope to see corrected in the near future. Whenever we had a sufficient number of hearings to warrant it, one of the commission or the entire commission would go and conduct the hearings.

I always made it a point at these hearings, which would be attended by a considerable number of employees and employers, to lay stress always on what I regarded as one of the most important features of the compensation law, the thought that it was intended to establish an act that if properly and sympathetically handled would promote a better feeling between employers and employees. I carefully and studiously avoided ever referring to capital and labor. I endeavored in every way to cause the employees to become acquainted with that act, as well as the employers. The fruit of that effort was quite gratifying. I will just mention one incident as an indication of it. I was conducting a hearing at Richmond, and afterward met the president of the largest manufactory in our State—Mr. F., who is also president of the United States Chamber of Commerce, and he said to me:

Now, you are going to have some hearings and I want you to understand that I have always favored this class of legislation. It has always appealed to me, and whenever your commission has decided upon a given subject what the law is, while I am conscious of the fact that I have an appeal, that is going to be final with us, because I realize and feel that a commission constituted such as yours is much better able to handle these questions in a proper way than an appellate court, who, however much they may know about the law, are concerned about very many things and know very little about this topic.

That was an illustration of the kind of feeling that they seemed to hold.

And the thought I had in the discussion to-day was that, if you can, get your employer to feel as that man felt, and I have had a great many experiences of the same kind going through our State, and it has made me feel that perhaps our method of personally conducting these hearings was one that possessed considerable advantage. I remember, too, another little incident that happened. There was a man who had lost an eye. It was reported, and it went through the ordinary channels. The man was allowed the full statutory

amount that he was entitled to for the loss of an eye. As time went along he was receiving his compensation, and one day the head of our claims department, who handles these agreement matters, received this letter from the employee. The employee said that he had received his compensation, but he said, "I have lost an eye, and I want an artificial eye, and I want to make those people give it to me." He said, "It will cost me \$100 or \$125." I told this gentleman, "I will tell you what to do; we can not make the man furnish the man an artificial eye, but you write to the employer and remind him of the fact that they have been very generous; they have usually been willing not only to give a man everything he is entitled to, but a little more. Tell him this idea of furnishing this would perhaps foster that feeling of better relations that ought to exist between two classes of people, and suggest to him that it would be a very handsome thing if he did that." By the very next mail there came back an answer, "Of course we will furnish him an eye." But he began then to blame the employee for not having come to him in the first instance.

Well, now, I believe that that kind of missionary work is something worth while; and it occurred to me while we were discussing this matter this evening that perhaps a little attention to this aspect of the subject and upon the desirability of the commission themselves getting closer to the employer and getting close to the employee will be promotive of the very best results.

As I said at the beginning, I did not come here prepared to make any talk. I have been very much gratified, as I said before, at the splendid presentations that have been made on the various subjects; and there is just one subject I would like to get some information about—if there is any other commission that is quite as unfortunate as we are in the possession of a statute relating to partial dependents. Our statute provides that in the case of a partially dependent person he shall receive that proportion of the maximum amount of the compensation allowed, which with us is \$10 a week. In working that thing out industrially I have been compelled on one occasion to award a mother a pitiful sum of about \$500. Now, I do not know whether our statute is weak in that particular. However, it will have to be amended at the next session of the legislature.

As to something said here to-day about recent decisions, I would like to say this, that the way we have approached the question of solving any legal question—questions of wide construction—was to take the opinions of supreme courts of other States and examine them carefully; not to feel that we were bound as a commission to follow the supreme court decision of another State, but to lay reasons upon which those decisions were founded, because sometimes supreme courts, as has been said here once or twice to-day, go far wrong;

and even the august House of Lords went so far wrong that it took them about 150 years to get right, so that I do not think we ought to give an absolute and unquestioned submission to the utterance of the supreme court of any State. But we ought to examine the grounds upon which the decision is based, and if it is satisfactory and commends itself we ought to adopt it. To that end I have endeavored to remedy what I considered an evil in the early days of my tutorship in this business. I first discovered that an investment I had made in a good many textbooks was a total loss; that I had discovered no textbook on the subject that was really worthy of the name. I proceeded then to subscribe to a workmen's compensation card service, and as they come in each week I put into a couple of books that I keep on the thing all of the decisions bearing on the subject, and in the course of the last six months I believe I have got a better law book or textbook on the subject of compensation than I have been able to see anywhere else. In other words, I believe the best thing we could do in that direction is merely to take the entire decisions of the various supreme courts and endeavor to digest them, and after doing that to try to reconcile the decisions one with another and then follow reason.

The CHAIRMAN. Time passes on and I shall have to ask the succeeding speakers called upon to remember the limitations that we have to face at this hour.

It gives me pleasure to ask Chairman T. J. Duffy, of the Ohio Industrial Commission, to present his views on some of the subjects we have been discussing to-day.

Mr. DUFFY. After all that we have listened to to-day, and following the eloquent address which has been made to us, I feel rather embarrassed in again beginning the discussion on administrative problems.

These problems are many, and perhaps they are not the same in the various States. For instance, to-day we took up much time in discussing the question of direct settlements. In our State we know very little of that, because under our plan there are two options. The employer pays into the State insurance fund or he gets authority to carry his own risk. Now, under that plan we have about 900 risks—less than 900 risks. Of those 900 only about 300 are bona fide self-insurers; the other 500 or 600 are risks where there has been reinsurance, which we think contrary to our law; and the reason that they are still in existence to-day is that we have been going through a process of litigation for three or four years, and in all the courts we have won, the point involved being that those contracts having been made prior to the amendment to our laws specifically making such contracts null and void, that those contracts are

existing on the theory that it would be a violation of the constitutional provision against the impairment of contracts. That case is now pending in the Supreme Court of the United States.

In that connection I might say, however, that even in those cases where we grant employers the right to carry their own risks, that authority is granted by the industrial commission, not by the insurance commissioner. There is no division of authority. We have authority at any time to revoke that privilege, and we have never yet been compelled to exercise that authority. In a few instances we have been compelled to threaten it, and because of our having control of it we have not had much opposition along that line. Yet there have been a few attempts made to make settlements at about 50 per cent of what the law provides.

One thing that causes considerable trouble is to dispose of permanent partial disability cases other than those contained in our schedule, for which a specific number of weeks is provided. For instance, for loss of an arm we have 200 weeks. It is very easy to ascertain what is due to the injured workman. But here comes a worker who received an injury that is not contained in the schedule. For instance, it might be an injury to his shoulder. He is unable to do the work he was engaged in prior to the injury, but can do usually some light employment. The only way we can measure the compensation due to him is by the impairment of his earning capacity. We found so many cases, for instance, where that impairment will be such that will entitle him to perhaps \$2 a week. He can get that \$2 a week if the disability lasts long enough until he receives \$3,750. But all during that time this man is getting a wage that does not permit him to fit himself for anything else. We are unable to ascertain what is due to him so that we can make a lump-sum settlement with him, and therefore we go along with this small compensation—not doing him much good—and at the same time find ourselves under the law unable to do anything to mend his condition.

In addition to that we found, prior to the amendment to our law, that we could not compensate for partial loss even of the eye if the worker went back to work and made some wages, but we say to him: If at any time in the future you suffer impairment because of the loss of vision you may come in here and claim your compensation by proving that. That may be 10 years or may be 20 years, but you can imagine that there is going to be difficulty in proving those claims if it comes in 10 or 20 years, probably. Besides that there is your actuarial problem you have confronting you, and you do not know what reservations to put up or to meet what might come up before you, and I think that is one problem that we might well discuss for the benefit of the other States besides Ohio.

This second injury proposition—we had considerable trouble in that. We found before the United States went into the war—and the reason I mention that was because things were upset after that; many things which are not normal have occurred since that time which are no criterion to go by—but just prior to that time this was developed, and just about the time the war was at its height employers began to realize a great many cripples might be on their hands, and we found many inquiries, particularly from the employers carrying their own risk, as to what was to be done in case these workers who had lost an arm or eye or another member should lose another member, and therefore become a permanent total disability, whether or not they would be compensated for the permanent or whether or not get compensated for the members lost.

The first case that came to our commission we decided that, regardless of how he received the first injury, the second injury made him a permanent total disability, and we paid the compensation as total permanent disability. That, however, made another problem for us, because these employers who are carrying their own risks were not disposed to employ that class of men. Therefore we were confronted by this problem. If we enforced that interpretation of the law we might bring on a more serious problem, whereby these men, already unfortunately situated, will have an additional burden added to them because of the refusal or reluctance of the employer to give them any work whatever for fear that it might become a permanent total disability. Now, we got at this in this way: Employers who carry their own risk under the Ohio law are required to pay 5 per cent on what their premium would have amounted to if they had elected to go into the State fund, and that 5 per cent goes into the State fund, into what we call our reserve. We decided in order to solve that problem that compensation, even in those self-insurance cases, will be paid out of the State fund in all cases of second injuries that make the injured worker a permanent total disability. Now, then, that does not mean much in dollars and cents, really, when it is distributed over the industry of our State. It would not make 1 per cent difference in the insurance premiums for the entire industry of the State, but the big thing accomplished is this, that it opens up the door of opportunity to hundreds of crippled workers who would have found it very difficult to get employment otherwise, because these individual employers would find it a big problem for them to meet if they had to meet that permanent total disability that might cost \$10,000 or \$20,000. So that is the way we met that problem.

We have the same thing confronting us on hernia. I just want to bring out this thought: We are all more or less finding it very diffi-

cult to decide what best to do in those hernia cases. Now, at first thought, if we follow out the same principle in hernia cases as we do in other preexisting diseases, the logical thing to do is to give compensation in all cases of hernia. It is an inconsistency compared with what is done in other preexisting diseases. But we know that if a physical examination is made, in most instances at least, it can be discovered that hernia is existing in those individuals. Many concerns began just prior to the war to carry out that plan of physical examination with the object stated in some cases to cure their workers of whatever defects they might have, but there was great fear on the part of the workers that it was meant to eliminate them entirely because of the possibility that they may become a burden on the employer in case the employer had to pay for the hernia. Now, then, you see there is the same problem there. The employer would not want to employ the man whom he discovered had hernia. So the question is: Is it a benefit to this employee inflicted with hernia to insist that the employer must pay him each time that hernia develops in the course of employment, when the probabilities are that the employer may refuse to employ him at all when that condition is brought before him? So that you can see there are two sides to the problem, and each of them presents a problem that society should find some solution for—both the cure of hernia and a job for the man who is afflicted that way.

In lump-sum awards we have the usual difficulties. Ordinarily it might be best and is best to pay weekly or biweekly payments of compensation. But there are many cases where great benefit can be done to the claimants by granting a lump sum either to go into business, or to purchase property, or to pay off a mortgage on a home. I can hardly agree with some opinions that I have heard expressed that we have to so supervise and oversee these lump-sum expenditures as to deprive the claimants of all responsibility themselves. I recognize some of them will misuse the funds. Some of them will take the best care of their property, but if ever you are going to develop responsibility in them you have to trust them. And when a commission has done its best in determining an award in favor of claimants, and they afterwards abuse that privilege or misuse it, I do not think it is any reflection upon the administering of workmen's compensation law. It is part of the education or process of education which I think is going to develop a better condition in the future; whereas if we do not intrust them with some of this responsibility we are never going to get any further than we are to-day.

In our State very often some one wants to purchase property. We make the award and then we put a provision in the deed that

they can not dispose of the property for six or eight years. Now, then, they can do it by coming and asking our permission. That means that we treat them, you might say, as minors or people who do not know how to do their own business. Now, understand, I do not say we should not help them, but the help should be in an advisory capacity, because I believe I know the mental attitude of the average laboring man, particularly the better element of him, and the attitude is this, that if you say you are going to do for me certain things and you are going to take me by the hand and lead me here and lead me there as though I was a child, I do not want that. If you have not confidence enough in me to let me do the best I can with that which I have a right to, then I do not want that kind of help. I think that is the mental attitude of the average laboring man, particularly the better element of them.

In cases of appeal, we have a problem there. Our law provides that appeal may be taken from our decision where we deny any compensation. We are a good deal in the situation of the employers under the old system: Every time a case gets to the jury they decide against us. We tried to get that in our State to make appeal direct to the supreme court on the record of the case, and have no jury trial, but the labor people of our State are opposed to that. While they have agreed that the general principle of the law would be better without any court proceedings, yet they insist if there is going to be any proceedings in court they are not willing to dispense with jury trial. They want to preserve the right.

There are other things, but the time is going by, and I won't take up too much time. In conclusion I just want to put up this one proposition: This is my own motion—I think other members of our commission agree with me—our most serious defect has been, I believe, that we have not yet got the promptness that we wish to achieve in disposing of the claim. I don't know just how we might compare with other States. When I make that remark I am measuring our own achievement with what I think we ought to accomplish and will ultimately in the near future be able to accomplish. This leads me up to what I think is a very important problem in administration, and that is to get enough money to properly administer the law. We find it very difficult to impress upon the members of our legislature, first, the necessity of the number of employees that we find necessary; second, the necessity of paying salaries that are necessary to get the right kind of employees. Now, because of that we have had, I think, a little more delay than should be under our system in disposing promptly of claims.

Together with that we have had some fight with the insurance companies, and I want to tell you it keeps us busy. We have been attacked and have been fighting arguments aimed at our plan, saying

that because of political influences, whereby we would be disposed to make awards to get votes or to make rates to get votes, that our plan must eventually be a failure. Because of that fact we, of course, have had that in our mind all the time, and I sometimes think we have gone to the other extreme. We have not perhaps paid as much attention as we ought to disposing of the the claim promptly. We want to convince those who are trying to break down our plan that political influences could not swerve us from the path of the best and most efficient actuarial calculations and compilations in making rates, and at the same time that we would exercise the greatest caution and utmost care in passing upon claims and deciding them upon merit; to see that no worker will be denied his just rights, yet at the same time that no one would get that which was not due to him. You can readily see why we were careful on this point.

Now, I think it is safe to say that we have convinced the entire United States, including insurance men themselves, that we have achieved those two things and therefore we can turn our attention to solving the other problem—promptness in meeting claims.

The CHAIRMAN. You will be interested to know that I asked Chairman Duffy this afternoon when he was appointed on the Ohio commission. I thought that probably I had the honor to be the dean of the convention in the point of service, but he told me that he was ahead of me just a few weeks; but inasmuch as there was a lapse in Ohio on account of some legal proceedings, I am willing to concede that Chairman Duffy is the dean, and I am sure he will be just as generous to say I am the dean.

There is another paper or speaker on the program—Mr. Gardiner, commissioner, department of labor and industries, Minnesota.

## PROBLEMS OF MEDICAL TREATMENT UNDER THE MINNESOTA COMPENSATION ACT.

BY JOHN P. GARDINER, COMMISSIONER MINNESOTA DEPARTMENT OF LABOR AND INDUSTRIES.

Administration is always a fairly acute problem in Minnesota because of the dual system that we have. The responsibility is primarily placed upon the district courts, but a secondary responsibility has been given the department of labor and industries of observing and assisting and supplementing until we have in practice two parallel and interrelated systems, with the initiative often as much in the hands of the department as in the courts.

The defects due to the dual system are nowhere more apparent than in connection with the medical treatment given under the provisions of the act. A fairly complete plan of checking all settlements approved by the courts is now in operation in the department, and satisfactory cooperation is secured from the judges in reopening cases in which unintentional errors have been made. But in connection with the kind and variety of medical and hospital treatment given, and the impairment ratings based thereon, all is still chaos. The physician's certificate in the settlement petition, the only official document which bears at all upon the medical treatment, does not often give enough facts for a disinterested official, making a review some time afterwards, to form a judgment. In contested cases, of course, there will be a detailed report by the attending physician, and often one by a neutral physician, but these are the exception. As a rule, no one, neither the judge who approves the settlement nor the department officer who reviews it, has seen the injured man nor had a chance to ask any questions about the medical care.

When it comes to rating of permanent partial injuries the confusion is even more marked. No one has the authority to make rules or set up standards as to proper methods of rating. The result is that the courts depend upon the physician in each case, and there is the widest latitude in fixing the degree of loss of function from a given injury.

To these two problems—the kind of medical care given and the variety in ratings—the department has addressed itself during the past year. We have to recognize the limitation of our powers, and the chief thing we will be able to do will be to collect data to be used as a basis for recommendation of changes in the law. Indirectly, however, it is quite possible that we will accomplish something in

the direction of an amelioration of conditions. If any deficiencies are found in the medical care as supplied by insurance companies, we expect to find them quite responsive to suggestions from the department; and the same will be true of many employers, while others should prove susceptible to pressure from the court or from fellow employers.

The more difficult of the two problems to deal with will be the nature of the medical care. It is only in a rare case that a direct complaint is made. All such cases will, of course, be investigated thoroughly. An investigation will also be made of all cases which are picked out in checking the settlement petitions as showing any extraordinary features or giving cause for doubt. Finally, an additional source of information is available this year that we have never had before. Rehabilitation of industrial cripples has been begun under a division of the State department of education closely cooperating with our department.

This means that every seriously injured worker will be seen personally by a State official, his impairment examined, and his history taken. Any information so secured will be at the service of the department of labor and industries, and can be utilized for its bearing on the compensation side of the case. The greatest obstacle to a true insight into the character of the medical work has thus far been found to be the genuine difficulty that a physician finds in passing on the work of another physician at a date considerably subsequent to the injury, as well as the professional delicacy regarding criticism under such circumstances. Perhaps in many instances where the department feels that suspicion is justified, it will have to be content to watch for later cases by the same doctor or hospital; and if it finds that impairments from comparatively slight injuries are frequent, or that infections are not uncommon, it will have to conclude that such results are a habit and not a mere accident, and bring pressure for a change of conditions. While the \$200 limitation on medical expenditures under the act never should have been an excuse for poor work, even that motive has been removed by the present legislature, and nothing should be permitted to stand in the way of genuinely adequate care.

On the question of ratings, the matter becomes one of merely keeping a complete record of the various findings made, care being taken to assure that the injuries compared are identical. In addition to the findings in actual cases, opinions will be sought from physicians of standing familiar with compensation work. Thus far the widest divergence has been found in the matter of rating some of the most frequently occurring types of loss of function.

To illustrate: Two of the best physicians practicing in connection with compensation cases recently were asked to give their opinion

on the loss of function involved in five fairly common injuries. They were in agreement on only one of the injuries. On such a simple thing as stiffness of the distal joint, one held that it was the equivalent of the loss of one-fifth of the finger while the other held it equaled the loss of one-half of the finger. These were two of the fairest, most conscientious physicians we are acquainted with. If such is the divergence on such an easily ascertainable impairment, the divergence in major injuries can easily be imagined. We hope as a result of our study to arrive at some consensus of opinion, or, lacking that, to offer as a standard what we consider to be the best-founded opinion.

If it proves impossible to bring about order in this manner, and we are not at all certain that it will be, then our only remaining course will be to formulate standards or general rules of rating which can be written into the law by the next legislature.

The CHAIRMAN. Mr. Kingston has one or two announcements to make, and before he does so I thought we ought to congratulate Mr. Kingston on the very nice meeting to-day and the excellent spirit that has been shown. We had a diversity of discussion, showing, on my way of thinking, an excellent grasp of all compensation problems, and that must be particularly encouraging to Mr. Kingston because of the tremendous amount of work a president has to undertake in preparing for a gathering of this kind.

Mr. KINGSTON. I want you to remember the program for to-morrow afternoon particularly—both afternoon and evening will be devoted to the medical session. We look forward with a great deal of interest to these sessions to-morrow afternoon and evening.

Then prepare for Thursday, and go to bed to-morrow night early enough so that you can get up in the morning, with all your ablutions performed and be ready to be on the street at 9 o'clock, not 5 after 9. Motors will be provided. I want to impress upon you to reserve Thursday and be prepared to be out sharp at 9 o'clock on Thursday morning. There is one item on the program for Thursday particularly that I am sure you will be interested in—that is, a visit to the Dominion Orthopædic Hospital. We have up there 900 or more of a class of men described as war cripples, where they are being retrained and rehabilitated, and it is an object lesson which I am sure you will look forward to with a very great deal of interest. And I may say to Dr. Cody we are going to pay a visit to the Parliament Buildings about 25 minutes to 10 on the morning of Thursday, where an official photograph of the convention is to be taken at the front of the building; and I am going to ask him to promise now that he will come out and join us and take a front place in the photograph.

**WEDNESDAY, SEPTEMBER 24—MORNING SESSION (BUSINESS MEETING).**

**CHAIRMAN, GEORGE A. KINGSTON, PRESIDENT I. A. I. A. B. C.**

The CHAIRMAN. We will come to order. Are any of the committees that were appointed yesterday ready to report? Mr. Andrus, can you report?

Mr. ANDRUS. The committee on amendments to the constitution have met and approved the amendments as read yesterday and recommend their adoption.

The CHAIRMAN. Perhaps it is not necessary to go over the amendments in detail. Dr. Meeker read them yesterday, showing the relation of the amendments to the original constitution. Is it the pleasure of the meeting that the amendments as suggested be adopted? [Carried.]

Are there any other amendments to the constitution to be suggested by any of the members? Then these will be considered as adopted.

It is the intention of the executive committee to have the constitution printed before the next session; heretofore they have simply been mimeographed. Members will receive by mail a copy of the revised constitution in due course.

The committee on resolutions. Mr. Funk was named as chairman of that committee.

Mr. FUNK. I was excused on that.

The CHAIRMAN. You were named second on that committee, Mr. Marshall.

Mr. MARSHALL. I will undertake to act, as Mr. Funk has to leave this evening.

The CHAIRMAN. And will Mr. Gardiner be associated with that committee in place of Mr. Funk, who is leaving?

The nominating committee, of course, will not report until Friday morning. The audit committee—Mr. Kennard is not here. He has the financial statement and all necessary equipment to make the audit.

Then that concludes that particular matter.

There is one feature arising out of the secretary's report that ought to be dealt with this morning, that is, the financial policy of the association. The simple point is, I suppose, Dr. Meeker, as to whether the charge shall continue to be \$50 per jurisdiction or \$25 or any other sum less than \$50 which the association may consider

proper. That matter is now open for discussion and we will be glad to hear an expression of opinion.

Mr. ANDRUS. Mr. President, is not that in the constitution?

The CHAIRMAN. Well, that was a suggested change by the secretary.

Mr. ANDRUS. That was not one of the amendments?

The CHAIRMAN. No; but the secretary mentioned it in his changes.

Mr. ANDRUS. The only way it can be changed is by constitutional amendment—reference to the committee.

The CHAIRMAN. Well, we can take that suggestion as having been mentioned by the secretary yesterday, and I would hold that the whole question of whether the fee shall be \$50 or \$25 is open for discussion, in view of the mention that was made of it by the secretary yesterday, leaving out of the question for the moment the report of your committee. If there is any discussion on that subject, we will be glad to hear from any member of the convention.

Mr. MARSHALL. What was the function of Mr. Andrus's committee?

The CHAIRMAN. The function of Mr. Andrus's committee was to consider certain detailed amendments which were suggested and recommended by the executive committee. These were read.

Mr. MARSHALL. I will move that this report be referred to that committee for consideration and recommendation.

The CHAIRMAN. That is this particular question, whether the fee shall be \$25 or \$50 or any other sum?

Mr. MARSHALL. Yes.

Mr. FRENCH. I second that.

The CHAIRMAN. Is there any discussion on the subject?

Dr. MOWELL. I might ask, relative to our situation in the State of Washington, whether the industrial board being a member of the association, the medical aid board, and safety board are excepted from that? Now, will we have to have a separate membership? I wish you would settle that.

The CHAIRMAN. If I were asked for a ruling personally I would say the intention is that membership shall be by jurisdiction, not particular organizations within the jurisdiction. In some States and some Provinces the whole work of the labor department and every feature of labor as related to government comes under one board. In every jurisdiction we have a compensation board, we have a factory inspection department; you have a medical aid board, and have other types of organizations. It is not the intention that all of those boards shall contribute by separate membership. I think I speak the sense of the association as it was originally organized, that membership should be by jurisdictions, and that when a State or Province pays its \$50 fee that entitles to representation not

only from the compensation board of the State but if there is an integral part of the State organization, such as factory inspection, interested enough to attend these conventions, we welcome them here as full representative members of their particular State. If any gentleman present would question my interpretation of the situation, I will be glad to have an expression of opinion now. Is it the pleasure of the meeting, then, that this matter be referred to Mr. Andrus's committee [Carried.]

It is probable that this morning's session will not last out the full morning, as it did yesterday, and if it does not I hope the members of those various committees will use the time available to get together and complete as far as possible their reports, so as not to have too many tag ends waiting over when we come near the end of the session. The danger always is if we try to crowd in the committee reports when we are about to close up they do not get the full discussion that the merits of the situation deserve.

Dr. THOMPSON. May I make a suggestion? Would not it be a good idea to set a definite time as a special order for different reports and then confine ourselves—

The CHAIRMAN. We have a special order for Friday, and the purpose of the special order for the business meeting on Friday is to receive all final reports of committees and complete any other business. I suggest that we should try to clean up as much of the business beforehand as possible.

If there is no other business, then, for the morning I will ask Mr. Armstrong to take the chair and proceed with the discussion as outlined in the program.

As intimated, of course we very much regret that death has taken the late member of the New York board, Mr. John Mitchell, who was to have read a paper this morning, and I presume the resolutions committee will suitably deal with that.

## WORKMEN'S COMPENSATION LEGISLATION.

CHAIRMAN, FRED W. ARMSTRONG, VICE CHAIRMAN WORKMEN'S COMPENSATION BOARD, NOVA SCOTIA.

The CHAIRMAN. We will try to get through a little earlier this morning than we did yesterday. The first paper on the program is that of Mr. John Mitchell. It is not necessary for me to say anything in regard to the place Mr. Mitchell held in compensation circles, and also his place in the labor world in which he took a very prominent part. One thing that strikes me in connection with Mr. Mitchell's work is that he always retained both the confidence of the employees and the employers. Since no representative of New York State is present this morning we will pass Mr. Mitchell's paper and proceed to the next address on the program.

The next paper is by Mr. L. D. Clark, of the United States Bureau of Labor Statistics, "Employees engaged in interstate and foreign commerce."

Mr. CLARK. We spoke yesterday of the unfailing source of litigation that is found in the phrase "arising out of and in the course of employment." I do not think that there is a fact or item in industrial experience that gives rise to more unending and more hopeless litigation than the question of the distinction between interstate and intrastate commerce, and what I have to say about railroad carriers I hope will be of some assistance in simplifying the problem that is before the courts so continually and offers the workmen such difficulty as to which remedy to pursue.

**EMPLOYEES ENGAGED IN INTERSTATE AND FOREIGN  
COMMERCE.**

BY LINDLEY D. CLARK.

**INTERSTATE EMPLOYEES.**

**PRESENT STATUS.**

The relation of railroad employees to the question of accident relief presents this anomaly, that the industry that made the first successful attack on the old common-law doctrine of employers' liability is its last stronghold. The injustice and inadequacy of the common-law system as applied to railroad employments was specifically recognized in laws enacted as long as 30 to 40 years ago, and even longer; but to-day, when the doctrine of liability for negligence has been discredited and superseded in the great productive industries generally, it is still the sole means of redress in interstate transportation.

I believe that the reason for this anomaly is based on the fact that the question of negligence is a fighting proposition; and after the issue has been formulated and the lines drawn it is difficult for the parties to the conflict to surrender any of the supposed gains of victory. Until 1906, cases of injuries to interstate employees were sued upon under the common-law or State statutes, Congress having never taken any action in this field; but in that year the efforts of a decade culminated in the enactment of a Federal liability law abolishing the defense of fellow service and modifying the rules of contributory negligence. This legislation had been earnestly supported by the trainmen's organizations and as earnestly opposed by the railroads, and though it was held unconstitutional by the Supreme Court in 1908, on the ground that it failed to limit its application to matters within the power of Congress to regulate, a new law was enacted in the same year avoiding this difficulty, adding also a modification of the rule of assumed risks, and this law has been upheld as constitutional.

With the enactment of these laws over the opposition of the railroads, the employees felt that they had secured an end long striven for, and doubtless regard the very resistance of the employers as the best proof of the advantages to be expected from the new enactment. In the midst of these endeavors came the news of a different

method of meeting the problem. Instead of the whole burden of the trade risk falling on the employee, and the employer being liable for a speculative sum in damages where negligence could be proved, let the industry carry its own risks and the employee be compensated in an agreed amount in every case of injury arising out of and in course of the employment. But the idea was too novel, and the spoils of victory were not yet realized. "Our people are afraid of this compensation idea," said one of their legislative representatives to me when its superiority was being urged; "what we want is a good, stiff liability law." The very readiness of the railroads to accept the compensation system was suspicious, especially with the memory of their fight against the liability law still fresh. "Fear the Greeks bearing gifts." Then, too, there was the opposition of the damage-suit lawyer, active on the floor of the brotherhood convention, where he retained his right to a seat by reason of a former craft relationship, and not unmindful of his personal interests, any more than were his fellow practitioners who held seats in the Federal Congress. Joined with this was the sense of the self-sufficiency of certain strong organizations with well-supplied treasuries which the members might avail themselves of to look after the ordinary accidents, while retaining the right to sue for \$10,000, \$15,000, or \$20,000 in cases where negligence appeared; and this held good, even though the defenseless position of the far greater number of railroad workers outside of these organizations was freely recognized.

Whatever may have been the grounds for defeating a compensation law, as was done in 1912, or for failing to secure the enactment of such law during subsequent years, the fact is sufficiently obvious that the liability statute has not produced the anticipated results. It has, indeed, had the desired effect of superseding varying State laws and common-law rules by a uniform national standard; but it has also narrowed the rights of the injured worker and his survivors to the provisions of this statute as the sole and exclusive basis of recovery for injury. Suits may be brought in cases of negligence, of which the evidence is often destroyed by the accident causing the injury, but no redress is possible in the far greater number of cases (estimated to be 75 or 80 per cent of the total) where the injury is due mainly to the trade risk and no proof of negligence can be made.

Disappointment with the workings of the liability act is freely confessed and complaints are made against its interpretation by the courts. What foundation these may have, if any, is a question outside the scope of this discussion; but I think that no one of us reading the amendments that have been suggested can feel that they offer any real prospect of relief. At least four amendments were offered in the Sixty-fifth Congress, and the process has been renewed

in the Sixty-sixth—sufficient evidence of dissatisfaction with the existing law; but neither any one nor the sum of them goes to the root of the matter, which is that the question of fault is not the question of chief importance when relief from the consequences of an injury is at stake. With but 20 to 30 per cent of the cases securing any recovery at all, and but 35 to 50 per cent of the sums recovered as judgments finally reaching the pocket of the suitor, the question is one of a new system and not of patching up the old one. (I take these figures from the report of the Employers' Liability and Workmen's Compensation Commission, appointed under a resolution of Congress in 1910, of which Senator Sutherland was chairman.)

It is worthy of note that the chief labor opponent to the Sutherland bill of 1912 based his opposition, not on an objection to the principles of compensation as such, but because a compensation system had already been established by the brotherhood for which he spoke, and he desired to retain both it and the action for damages. First declaring that the most impressive feature of the entire discussion of the proposition was the almost undivided support given by both employers and employees, he referred to the work of the brotherhoods which had "expended years in building up magnificent systems of compensation for death and disability arising from any cause," and in securing greatly improved employers' liability legislation. Recognizing the necessity of some measure that will afford protection for the less thrifty and the unorganized, "who apparently must depend upon a paternal Government for compensation for injuries," he nevertheless opposed the one measure that would reach their need because that need did not seem to him to be shared by the "railway employee in train service who has found means of helping himself in matters of compensation for injuries arising out of his employment."

The gist of the statement, then, is that a vocal, organized group of workmen, with a benefit fund to care for injuries due to trade risks, desired to perpetuate in their own interests a system based on negligence and liability while "the millions who have proved themselves helpless" are to be left in that condition because unorganized and voiceless. Contrast with this the statement which the president of the Brotherhood of Railroad Trainmen made before the same commission: "I wish to go on record at this time as unqualifiedly favoring a workmen's compensation act, as a result of resolutions passed by the last two biennial conventions of our organizations"; and the pledge of the president of the Order of Railway Conductors to furnish every consistent aid possible to secure the enactment of a compensation law; and the similar pledge of the president of the Brotherhood of Locomotive Engineers. Some realignments have

taken place since the foregoing statements were made, and in 1917 it appeared that the trainmen were opposed to any sort of compensation legislation; that the firemen and enginemen had given their president discretionary powers on the subject; that the conductors favored an optional provision, giving the employee his choice between the Federal liability statute and the compensation law of his State; and that the engineers were in favor of a Federal compensation law. However, none of the brotherhoods would take action that would lead to arraying them one against another. The present status (1919) varies little, if any, from that of 1917, so far as convention action is concerned, the trainmen maintaining their attitude of opposition. But it hardly seems possible that this one brotherhood, standing alone, shall continue to prevent legislation desired by the great majority of railway employees; and there is good reason to expect the cooperation of the brotherhoods favoring a compensation law with other agencies and organizations to secure the enactment of a Federal statute on the subject, though the united effort of all, rather than conflict, is most earnestly to be desired.

It may be worth while to note for a moment the incidence of the effects of the present situation. There are from one and one-half to one and three-quarters millions of railroad employees in the United States, the majority of whom are excluded from the benefits of compensation laws because of the lack of a Federal statute, either directly or because of the influence of such lack on State legislation. Of these about 400,000 are train employees proper, eligible to membership in the four great and influential brotherhoods, a number that is exceeded by the number of workmen engaged in maintenance of way, most of whom are classifiable as in interstate commerce, as may also be the many thousands of station agents and masters, station service employees, freight handlers, etc., all of whom are outside these strong organizations and whose voice has been but little heard in regard to the desirability or otherwise of compensation legislation. There is also a larger number of shopmen than of trainmen, and while these will doubtless for the most part be considered as not engaged in interstate commerce, they are so regarded under certain circumstances. However, excluding them entirely, it appears that in 1916 trainmen sustained but 50 per cent of the fatal accidents and 42 per cent of the nonfatal accidents. The distribution of accidents among the brotherhoods can not, of course, be reported, but certainly it will be a welcome and just conclusion if the decision shall be reached to no longer postpone the enactment of a law of such wide import because of the unreadiness of a single brotherhood, constituting such a small minority in numbers and in actual interest.

## BENEFITS UNDER LIABILITY AND COMPENSATION.

The primary and fundamental test of any system is, of course, that of resultant benefits. The commission already named estimated that personal injuries cost the railroads of the country \$12,000,000 annually, of which less than \$5,000,000 actually reached the injured men. It was further computed that the measure drafted by the commission would add about 25 per cent, or \$3,000,000, to the injury costs, but that of the resulting total of \$15,000,000 at least \$14,000,000, or about three times as much as under the liability system, would actually reach the victims of the accidents or their dependents. An important railroad system reported its casualties for the three years 1908, 1909, and 1910, together with the costs. Computing awards as under the Sutherland bill, it appeared that for the death cases occurring during these years the aggregate would be approximately doubled; for permanent total disability it would be increased more than sixfold; for permanent partial disabilities, more than doubled; while for temporary disabilities recovery would be reduced by about two-fifths, the total effect being to increase the cost to the company about 86 per cent. Of course, the amounts actually reaching the injured men or their dependents would be much more largely increased.

One could well wish that after the years of experience under compensation laws comparative data for the two systems could be supplied. That this is not possible for railroads is obvious from the fact of their exclusion from the laws; while for other industries the facts are available in only a limited degree. Moreover, liability data have always been notoriously difficult to obtain. A brief but suggestive summary appearing in one of the bulletins of the United States Bureau of Labor Statistics shows the facts in a number of cases of fatal injuries with families surviving. In 53 such cases in Connecticut in 1915, compensation awards averaged \$2,055. In Ohio, another compensation State, the average was \$3,008 for 206 cases; while in Pennsylvania, then under the liability system, recoveries and settlements in 134 cases produced an average of but \$261. To the same effect, even if not showing such a wide divergence, are the estimates of the Massachusetts Industrial Accident Board in 135 fatal cases not coming under the compensation act, for which settlements were actually made of an average amount of \$1,483; while if they had come within the scope of the law the average would have been \$2,344. The diversity between the amounts in the last instance is the less because only those cases are noted in which some settlement was made; while it is well known that under the liability system, in many cases—in fact, the large majority of the cases—no right of action accrues or can be sustained, by reason of the difficulty of prov-

ing negligence where it occurs, as well as of its absence in many cases.

A summary of statistics compiled by Mr. Carl Hookstadt, comparing experience under workmen's compensation and employers' liability systems, collating a variety of data, appears in the *Monthly Labor Review* of the United States Bureau of Labor Statistics for March, 1919. The study is based on a number of investigations and reports, and the conclusion is reached that the data in existence "prove quite conclusively the superior advantage of a workmen's compensation system as opposed to an employers' liability system."

#### CONSTITUTIONALITY.

The question of constitutionality that loomed so large in the hearings before the Sutherland commission referred to above can be disposed of in a word. The power of Congress to legislate on the subject of the relations of railroad companies to their employees was decided in 1908, the Supreme Court of the United States declaring that such power necessarily followed from the right to regulate the movement of a train in interstate service; "since to admit the authority to regulate such train and yet to say that all regulations which deal with the relation of master and servants engaged in its operation are invalid for want of power would be but to concede the power and then deny it, or at all events to recognize the power and yet to render it incomplete." (*First Employers' Liability Cases*, 207 U. S. 463, 495, 28 Sup. Ct. 141.)

There is no vested right in any person to maintain action in any special form; and the substitution of compensation for the liability system is within the power of legislatures even though it establishes the principles of responsibility to make payments in the absence of fault (*New York Central R. R. Co. v. White*, 243 U. S. 188, 37 Sup. Ct. 247). The law may be of compulsory acceptance (*White case*, supra; *Mountain Timber Co. v. Washington*, 243 U. S. 219, 37 Sup. Ct. 260); or may be binding upon the employee after acceptance by the employer (*Middleton v. Texas Power & Light Co.*, 249 U. S. 152, 39 Sup. Ct. 227); or compulsory on the employer and optional for the employee (*Ariz. Copper Co. v. Hammer*, 39 Sup. Ct. 553); or again it may be optional with both parties to the contract (*Hawkins v. Bleakly*, 243 U. S. 210, 37 Sup. Ct. 255). The power of Congress to establish a compensation system for interstate employees is beyond question.

#### FORM OF LEGISLATION.

Various suggestions have been made as to the form that a Federal act should take. Negatively, it has been argued that Congress should withdraw from the field and leave the subject of the redress of per-

sonal injuries to employees to the States, as was the case prior to 1906. But one of the great ends in view in the enactment of the Federal liability law was to secure uniformity, fixing a common standard of liability and of recovery for injuries occurring under like conditions to the employees of interstate common carriers. Adjacent States present sharp contrasts in the amounts of benefits offered, and a Federal law could hardly fail to exert a beneficial influence in the way of promoting at least an approximate uniformity. This purpose of securing a common standard has been approved by both employers and employees, and has been favorably commented on by the courts. Furthermore, it is hardly to be expected that Congress having once entered the field should withdraw from it; and no such response has been made to the suggestion as would indicate any probability of its adoption.

In arguing thus for a Federal statute which shall eliminate State variations I am not unaware that I am standing on territory in which the principle under discussion is in effect; that is, that injured Dominion employees, including those of the Canadian Government railways, shall be compensated in accordance with the provisions of the act of the Province within whose bounds the injury is received. This law is of recent enactment, and experience under it has not yet been reported to my knowledge; but however successfully it may work in Canada, it will hardly afford a definite proof of the applicability of such a rule to the United States, since the 11 Provinces of Canada cover a geographical area in excess of that of the 48 States of the Union, so that the problem of shifting jurisdictions is greatly minified.

Equally objectionable from the standpoint of one seeking uniformity is another proposal which is to the effect that Congress should enact a law to be effective only in those States in which no compensation law exists, or in which the laws fail to reach a certain fixed standard. This would indeed put a sort of premium on the enactment of legislation measuring up to the minimum requirements, but would not prevent a diversity in additional, local provisions in excess of this minimum. Such an act would not, therefore, fix the obligations of the carriers with any finality but would rather invite supplementary and adjunct enactments by the States. This would conflict with the whole spirit of existing Federal legislation on the subject of liability, which the Supreme Court has declared to be "paramount and exclusive," and not subject to be pieced out by local statutes (*Michigan Central R. R. Co. v. Vreeland*, 227 U. S. 59, 33 Sup. Ct. 192); and again it is said that where Congress speaks no power remains in the State legislature to determine the nature of the employers' liability, since that would be a division of authority

not contemplated by the Constitution (*Seaboard Air Line Ry. v. Horton*, 233 U. S. 492, 34 Sup. Ct. 635).

The proposition of divided authority was submitted to the Federal commission of 1911 already referred to, but met with no encouragement at that time. The argument offered against it by the chairman was that State legislation was based on its police power to control the relation of master and servant, while Federal legislation was valid only on the basis of its power to regulate interstate commerce—a power that Congress could not delegate to the States; that Congress must either occupy the field under its constitutional authority, or abandon it and leave the whole subject to the States to be disposed of under their police power.

To the same effect, but more cogent and authoritative, is the expression of opinion by the Supreme Court of the United States when this very question was before it in passing upon the claim of the Court of Appeals of the State of New York that a State law could supplement the Federal statute by taking over cases in which no negligence appears, since the Federal statute relates only to negligence cases. As to this the court said:

It is settled that when Congress acts upon the subject all State laws covering the same field are necessarily superseded by reason of the supremacy of the national authority. Whether and in what circumstances railroad companies engaging in interstate commerce shall be required to compensate their employees for injuries sustained therein are matters in which the Nation as a whole is interested, and there are weighty considerations why the controlling law should be uniform and not change at every State line. (*New York Central R. R. Co. v. Winfield*, 244 U. S. 147, 37 Sup. Ct. 546.)

The same principle and the importance of its recognition are set forth by the same court in an earlier case, antedating the Federal statutes on the subject. Mr. Justice Brewer, in 1893, spoke of the great number of conflicting and irreconcilable decisions of the various courts of the land on the question of fellow service, and declared it to be one in which the Nation as a whole is interested.

It enters into the commerce of the country. Commerce between the States is a matter of natural regulation \* \* \*. The lines of this very plaintiff in error extend into a half dozen or more States, and its trains are largely employed in interstate commerce. As it passes from State to State, must the rights, duties, and obligations subsisting between it and its employees change at every State line? \* \* \* The question is not local, but general. (*Baltimore & Ohio R. R. Co. v. Baugh*, 149 U. S. 368, 13 Sup. Ct. 914.)

Recent interviews with the claims agents of important railroads as to their methods of handling the complex situation induced by the variety of laws under which their roads operate in passing from State to State developed the information that they seek to make adjustments in accordance with the compensation standards of the various States regardless of the interstate or intrastate nature of the

service in which the employee is injured. The agent of one road expressed himself as indifferent as to whether a Federal compensation law for interstate employees should be enacted or not, inasmuch as the employees generally accept the present plan of adjusting all injuries on the basis of the State law. Litigation is reduced to a minimum by this method of adjustment, and it is their policy to make awards in all cases, securing releases from the claimants only where employers' liability exists. In another case the representative of the road was in favor of a uniform law, inasmuch as the State laws with which he was largely concerned were too diverse, that of New York being liberal in its benefits, especially for death, while the benefits of the New Jersey statute he regarded as too low. The compensation scale was followed in intrastate cases, but not so closely in cases that would develop under the Federal statute.

Other roads concerning which inquiry was made are reported to have followed the State compensation laws from the time of their enactment until the decision in the Winfield case, above noted, which declared the inapplicability of State laws to interstate employments. Even after this decision, one of the large companies continued to pay on a compensation basis until it appeared that the employees would accept compensation in cases where no negligence could be proved, but would sue in the hope of larger recoveries in negligence cases. The company therefore declined to make any payments except those necessitated by the terms of the liability statute. One company reported the benefits payable under the New York statute in cases of death as in excess of the average recovery under liability, being also without the loss due to lawyers' fees of as high as 50 per cent of the awards.

It may be of interest to note briefly some of the effects of the decision in the Winfield case on the experience of the New York Compensation Commission. A cross section of its records shows 50 claims of railroad employees on the blotter for the first three months of 1917, just before the decision in the Winfield case (May 21). Seventeen of these were classed as interstate employees, the claims of eight being denied in the first instance as interstate cases over which the commission did not have jurisdiction, or because settlements under the employers' liability act were reported. In eight others awards were made and subsequently reversed on account of the decision in the Winfield case, while one award seems not to have been disturbed.

The number of railroad cases considered during the first three months of 1918, subsequent to the Winfield decision, was identical; that is, 50, of which 22 were classed as interstate. Compensation was denied in all these cases in view of the decision already noted.

Awards or settlements were made in all the remaining cases for both years, the question of interstate commerce not being involved, so far as appeared from the records. It may be of interest to note in passing that the largest group of claims each year was that of freight handlers, not employees of the classes most commonly thought of in connection with interstate commerce.

Although these observations and experiences do not cover a broad field, their effect, whatever it may be, is all in the same direction, and argues for a uniform law, and if possible one of general application.

Objectionable on the same legal and economic grounds as the proposition to permit diverse State laws to control, or to enact a Federal statute which may be set aside by State enactment, is the proposition to extend the option of election not to States as units, but to the individual employee, who will be permitted to make his choice between the Federal liability statute and the compensation law of his State. Such a course would not only violate every principle contended for in the Supreme Court opinions cited above, but would multiply the geographical confusion by a factor representing the number of workmen from each State. It would add to the uncertainties of the elective laws as they exist in the individual States by the manifold complications that would arise by reason of the differences between the laws of the different States through which any railroad might pass, and render impossible any advance estimate of the liability of the companies. It would retain all the vices of the liability system and sacrifice many of the benefits of compensation. It seems equally objectionable from the practical and the legal point of view.

The fact that compensation and liability laws have operated contemporaneously in Great Britain is without significance on account of the great diversity of conditions. Recovery under the British liability statute is limited to three years' earnings, as is the amount that may be awarded under the compensation act. The right to sue is restricted to cases of direct and personal negligence; and both laws are of uniform application over identical territory. No weight can be given to the example of that country, therefore, since none of the prime conditions are comparable; moreover, appeal to the liability law is of diminishing frequency, so that even there slight importance seems to attach to the privilege.

At the other extreme from these proposals that breed diversity and confusion is the suggestion that Congress enact a law covering all railroads and railroad employments. This would end the conflict between State and Federal jurisdiction by the total absorption of the former into the latter, establishing a single uniform rule. It is objected to this that an amendment to the Constitution would be necessary before it could be done, and the decision in the *First Employers'*

Liability Cases is cited in support of this contention. It will be remembered that this decision held the liability law of 1906 unconstitutional because it failed to discriminate as to its coverage, the court specifically declaring by the unanimous voice of the justices that purely intrastate matters were outside the purview of Congress, and that the mere fact that a company engages in interstate commerce does not thereby subject all its business to the regulating power of Congress. This decision was rendered in 1908, and it is evident that, if the generally accepted understanding of its effect is the opinion of the Supreme Court to-day, the amendment is essential. If such an amendment were broached it would no doubt propose also to take over the entire control of rate fixing and the work of State railroad commissions generally, as is practically the case already in regard to safety appliances, hours of work, etc.; and the benefits of uniformity and unity of policy would be alleged in support of such action. The opponents of centralized control would doubtless interpose all possible obstacles to the achievement of such a result and there would be delay at best, even if the movement should be finally successful.

#### CAN A GENERAL LAW BE ENACTED?

However, the opinion has been forcefully and intelligently advanced that no amendment is needed in order to validate such a law. The relation between interstate and intrastate commerce is not only intimate; it is inseparable. Not only is the movement of trains commerce, but so also is the repairing of ways and bridges (*Pedersen v. Del.*, etc., R. Co., 229 U. S. 146, 33 Sup. Ct. 648); the repair of engines or cars used in interstate work (*So. Pac. Co. v. Pillsbury*, 151 Pac. 277; *Balch v. R. Co.*, 155 Pac. 580); work in a roundhouse (*C. & O. R. Co. v. Kornhoff*, 180 S. W. 523); switchmen moving or preparing to move interstate goods or appliances (*Vandalia R. Co. v. Holland*, 108 N. E. 580); watchman guarding interstate goods (*Smith v. Industrial Acc. Com.*, 147 Pac. 600); carpenter engaged in building extension of repair shop, in use for interstate engines (*Thompson v. Cin., N. O. & T. P. R. Co.*, 176 S. W. 1006), etc.; and the fact that the injury is caused by an intrastate instrumentality does not affect this conclusion (*Pedersen case*, supra); nor the fact that the injury is due to the negligence of an intrastate employee (*Second Employers' Liability Cases*, 223 U. S. 1, 32 Sup. Ct. 169). Any other view would regard "the source of the injury rather than its effect on interstate commerce as the criterion of congressional power." The power of Congress "to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those

who are employed in such transportation, no matter what may be the source of the dangers which may threaten it. That is to say, it is no objection to the exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce." (*Southern Ry. Co. v. United States* (1911), 222 U. S. 20, 32 Sup. Ct. 2.)

In the case just cited the court held constitutional a Federal act which applies to cars, locomotives, etc., "used on any railroad engaged in interstate commerce." A penalty was affirmed in the case of cars used in intrastate commerce, though there was nothing to show that they were used in connection with cars engaged in interstate commerce. The language of the opinion seems to be broad enough to sustain a compensation act covering all employees connected with the movement of trains and necessary concomitant service. Thus it was said:

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car, and when this is not the case the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but are generally used interchangeably in moving both; *and the situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic.* Besides, the several trains on the same railroad are not independent, for whatever brings delay or disaster to one or results in disabling one of its operatives is calculated to impede the progress and imperil the safety of other trains. [Italics mine.]

The opinion from which the foregoing citation was taken was delivered in 1911, three years later than the rendering of the opinion of the Supreme Court holding unconstitutional the liability law of 1906 on the ground of its failure to distinguish between matters of interstate and intrastate concern. No reference to the earlier decision is made in this opinion, which apparently has the effect of eliminating the distinction between interstate and intrastate service, if only the railroad rendering the service is a "highway of both interstate and intrastate commerce." While the opinion, therefore, does not formally set aside the older opinion, it does present the anomaly, if the older opinion has the effect often attributed to it, of abolishing the distinction between interstate and intrastate service in so far as material instrumentalities are concerned, while retaining it as to the personnel. It at least suggests the possibility of a broader view of the subject in view of the fuller appreciation of the constant intermingling of the two forms of service and their consequent interdependence, so that "whatever brings delay or disaster to one or results in disabling one of its operatives" would interfere with the other, and would therefore be subject to Federal control.

Perhaps the popular impression as to the earlier decision goes beyond actual warrant. The Supreme Court in a later case (1916), in discussing the liability of railroad companies for injuries to their employees, in view of the provisions of the Federal statute, said:

Unless persons injured in intrastate commerce are to be excluded from the benefit of a remedial action that is provided for persons similarly injured in interstate commerce—a discrimination certainly not required by anything in the Constitution—remedial action in behalf of intrastate employees and travelers must either be governed by the acts of Congress or else be left subject to regulation by the several States, with probable differences in the law material to its effect as regulatory of the conduct of the carrier. We are therefore brought to the conclusion that the right of private action by an employee while engaged in duties unconnected with interstate commerce, but injured through a defect in a safety appliance required by the act of Congress to be made secure, has so intimate a relation to the operation of the act as a regulation of commerce between the States that it is within the constitutional grant of authority over that subject. (*Texas & Pacific R. Co. v. Rigsby*, 241 U. S. 33, 36 Sup. Ct. 482.)

This at least suggests the possibility of the enactment of a broader law than the one now on the statute books—a suggestion that is borne out by the language used in a case not involving the safety appliance law, but simply the status of a member of a switching crew in the city of New Orleans. Here it was said:

Considering the status of the railroad as a highway for both interstate and intrastate commerce, the interdependence of the two classes of traffic in point of movement and safety, the practical difficulty in separating or dividing the general work of the switching crew, and the nature and extent of the power confided to Congress by the commerce clause of the Constitution, we entertain no doubt that the liability of the carrier for injuries suffered by a member of the crew in the course of its general work was subject to regulation by Congress, whether the particular service being performed at the time of the injury, isolatedly considered, was in interstate or intrastate commerce. [Cases cited.] The decision in *Employers' Liability Cases* (207 U. S. 463, 28 Sup. Ct. 141), is not to the contrary, for the act of June 11, 1906, 34 Stat. 232, there pronounced invalid, attempted to regulate the liability of every carrier in interstate commerce, whether by railroad or otherwise, for any injury to any employee, even though his employment had no connection whatever with interstate commerce. (*Illinois C. R. Co. v. Behrens*, 233 U. S. 473, 34 Sup. Ct. 646.)

The court points out in a later expression that the act of 1908 is specifically limited to interstate employments, and must be so construed; but the inference seems clearly warranted that a more inclusive law might constitutionally have been enacted. But perhaps there is still too much at stake to venture the enactment of a statute of broad coverage in such a unified form that it would be held that each part was presumably an inducement for the enactment of the other parts. However, it does seem to me feasible to enact a law of complete inclusiveness as to both forms of commerce, but so worded and paragraphed as to permit the severance of any portion

held repugnant to the constitutional limitations, leaving unaffected the portions that are of undoubted validity, taking the whole list of court decisions on the subject into consideration. The "severability" of statutes is a well-established principle in our jurisprudence, the Supreme Court saying: "It is a well settled rule 'that statutes that are constitutional in part only will be upheld so far as they are not in conflict with the Constitution, provided the allowed and prohibited parts are separable.'" (*Presser v. Ill.*, 116 U. S. 252, quoting from *Packet Co. v. Keokuk*, 95 U. S. 80. See also *Diamond Glue Co. v. U. S. Glue Co.*, 187 U. S. 611; *Covington v. Bank*, 198 U. S. 100.)

In view of this recognized principle the question would be one of adequately providing for that which would certainly be "allowed," while also submitting to judicial decision the question of the inclusion of the intrastate interests as to which doubt may in some minds still exist. To one familiar with the constant and undiminishing volume of litigation concerning the question of the boundary line between interstate and intrastate activities, the elimination of that boundary line is a "consummation devoutly to be wished." The question of the correlation of State and Federal laws and the differences of benefits arising under them would disappear, and the atmosphere of grave uncertainty as to the proper form of procedure, together with the hazard of the entire loss of rights by reason of the lapse of time, permitting statutes of limitations to take effect, would be dissipated. In any case such a law, properly drafted, would securely protect interstate employees and would in nowise affect injuriously the status of intrastate workers in their rights secured by State laws, if such laws are held to prevail. On the other hand, it would in such case clear the field for the inclusion of railroad workers in the State compensation laws, which has been felt to be so difficult that in some States, as Indiana, Minnesota, Texas, and Virginia, railroad workers are more or less completely excluded from the benefits of the local law.

An advantage that would be gained, even if only the interstate provisions are sustained, would be the coordinate existence of State and Federal laws of like spirit and method, each jurisdiction providing relief according to its terms, perhaps differing in degree, though the tendency would be, no doubt, to adjust State and Federal standards in the compensation field as has already been evidenced in liability legislation. But even if differences in the amounts of awards existed, there would be no attempt to secure like ends by compatible methods, removing the sharpness of contrast between the liability and compensation doctrines operating in such close juxtaposition. As an administrative suggestion in such case I would propose also the handling of the Federal cases by referees, to whom

should be given the privilege of exercising similar functions by State appointment under the compensation laws of the States within which they serve. Having to do with laws of similar methods of proof and similar spirit and purpose, it would require but the one proceeding to decide under which statute, State or Federal, the award should be made, a single hearing sufficing to dispose of both the jurisdictional question and the amount, if any, to which the claimant is entitled.

Summing up this phase of the subject, there can be but one answer to the question of the desirability and feasibility of a law for interstate employees. The desirability of a law of general coverage, if practicable (and it would almost seem that the Supreme Court had intentionally pointed the way to such a law), seems hardly less real and would appear to be a justifiable experiment, not involving hazard to the interstate portions of the law.

#### MARITIME EMPLOYEES.

The question of the maritime employee is, from the point of view of numbers, of less importance than that of the interstate employee. Furthermore, the great body of maritime workers reside in States which have compensation laws, and since the amendment to the Judicial Code in October, 1917, maritime employees are secured the right of making claims under the compensation laws of the State in which the injury occurs. This privilege is believed to be optional and to exist in conjunction with the right to proceed in admiralty as before the enactment of the amending statute. The situation, therefore, corresponds closely to that which would result from the adoption of one of the propositions considered above with regard to interstate employees—i. e., that the right to proceed under compensation should be an alternative one at the option of the claimant. A defect, of course, is that proceedings in admiralty do not in many cases give adequate relief, so that the failure to elect compensation in such cases leaves the injured person a redress quite as inadequate as that provided by the common law.

Prior to the decision of the Supreme Court prohibiting such action (*Southern Pacific Co. v. Jensen* (May 21, 1917), 244 U. S. 295, 37 Sup. Ct. 524), the industrial commissions of New York and California had awarded many claims in behalf of stevedores, longshoremen, etc., holding such employments to be constitutionally within the scope of their State laws. On the decision of the Supreme Court to the contrary, of course, this practice ceased, leaving such workers, as well as sailors on the high seas, to maritime rights only until the amendment in October.

Though the amendment was intended to give free choice to the workers in regard to their mode of procedure, it would appear that in New York at least the facts are not fully understood, since for the first three months of 1917, when the practice of awarding compensation had been in existence for a considerable period, 432 maritime cases were before the industrial commission; while for the first three months of 1918, after the payment of awards had ceased for some months, in consequence of the decision in the Jensen case, and the workers had been impressed with the idea that the State commission had exceeded its powers in granting them, but 266 maritime cases were before the commission, though the amending act of October 6, 1917, had become immediately effective. It would appear, therefore, that the announcement of the adverse decision of May 21, had been much more effectively circulated than the account of the permissive legislation of October 6. But little has come to hand to indicate the judicial construction of the amended code permitting this alternative choice. An interesting decision was rendered on March 6, 1919, by Judge Learned Hand, of the Federal bench in New York, who held that a libel in rem in admiralty was not the proper mode of procedure for the recovery of damages for an injury to a maritime worker. It was his opinion that the amendment to the Judicial Code had the effect of incorporating into it existing or future compensation legislation; so that where a State had a compensation law, as the State of New York has, which purports to abolish all other liabilities in favor of the remedy provided by compensation, this provision took effect in view of the enabling and permissive provision of the amended Federal Judicial Code. No other right of action therefore remains than that provided by the State law, the restraint effected by the Supreme Court decision in the Jensen case having been removed by the act of Congress. (*The Howell*, 257 Fed. 578.) Appeal has been taken to the higher courts as to the validity of this construction; and it certainly was not the intention of those who drafted the amendment that it should receive this exclusive application.

The situation is not made any more encouraging by a decision of the Supreme Court in June, 1918, subsequent to the amendment of the Judicial Code, but relating to a case arising prior thereto. It was held (*Chelentis v. Luckenbach S. S. Co.*, 247 U. S. 372, 38 Sup. Ct. 501), that a fireman injured on board ship was limited to a maritime recovery—i. e., wages, maintenance, and cure—and could not recover the full indemnity of the common law; and this in spite of the plea that the action was based on the provision of the Judicial Code “saving to suitors in all cases the right of a common law remedy when the common law is competent to give it.” The provision

was held only to make possible the enforcement by common law remedies of any right sanctioned by the maritime law; "but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common law standards rather than those of the maritime law." Clearly, if the amendment of 1917 as to compensation claims is to be similarly construed, it gets us no nearer a solution than before, this decision standing at the other extreme from that in the Howell case, if its apparent principle is held to apply. The New York Industrial Commission has proceeded tentatively on the assumption that there is a real option intended to be secured by the amended statute, and that the injured man is entitled to his choice, contemplating, moreover, that this choice shall be his own and a real one. Thus, where a claim agent or other representative of the employer or insurance carrier has moved for an adjustment under admiralty, the commission will assume that the claimant is not prevented from submitting a claim for compensation if he so desires, even though he has accepted relief under another agreement. In accordance with this idea, a claimant submitting a signed agreement and release was advised to accept the consideration named therein, but also to submit a claim, and if found to be entitled to additional benefits an award would be made and taken to the courts if necessary for a final determination.

The situation with regard to the maritime worker is not yet clarified, and illustrates the undesirability of the indefinite, alternative rights agitated by a certain group of interstate employees. It is a matter over which Congress has full authority to act, and the desirability of such action is indicated by the uncertainty as to extra-territorial powers of State laws and commissions, and the importance of enacting a uniform standard for employees whose occupation, in so far as it is actually that of transportation, may lead to frequent and considerable changes of jurisdictional rights. While the case is not so pressing from one point of view as for the interstate employee, since there may be at least an opportunity, if understood, to secure the benefit of the State laws, it does seem to be a proper field for action on the part of those interested and informed on the subject to close up, if possible, the circle of compensation measures and secure the final extinction of the ancient systems which grew up at a time when the social sense and appreciation of the rights of the worker were less developed than we believe them to be to-day.

The CHAIRMAN. Gentlemen, we have listened to Mr. Clark's very interesting paper on a difficult subject. The next paper is also a rather difficult question and one which most of us find very hard

to understand, "The attitude of the railway brotherhoods toward a uniform Federal compensation law covering all railway employees," by D. L. Cease, editor and manager, *The Railroad Trainman*.

Mr. CEASE. Representing the railroad employees, who are either opposed to compensation or wholly indifferent to it, I suppose that in a certain sense I might be in bad odor in this gathering. I desire to say in the beginning, to square myself not only with you but with everybody else who does not understand the present opinion of the greater number of the officers of this railroad organization, that we are not opposed to compensation. The majority of the officers of the four transportation brotherhoods believe in compensation, and regret very much that a Federal compensation law has not before this time been enacted.

## ATTITUDE OF RAILROAD TRANSPORTATION ORGANIZATIONS TOWARD FEDERAL COMPENSATION.

BY D. L. CEASE, EDITOR THE RAILROAD TRAINMAN.

To come before a meeting of this kind at this time and say that the employees of the train, yard, and engine service in the United States are either opposed to or indifferent to a Federal compensation law will appear absurd, and yet, so far as I am able plainly to state the case, that is the fact. Our Canadian members have taken an entirely different position. They have encouraged compensation legislation, the plan has worked in a fairly successful way, and they are trying to make the law of each Province come closer to their ideas of what compensation should be.

The position of the transportation organizations toward such compensation legislation ranges from that of open and determined opposition to any form of Federal compensation by the Brotherhood of Railroad Trainmen, which is led by a comparatively small number of men who unquestionably get their inspiration from liability lawyers, to that of the apparent indifference of the conductors and firemen to such legislation, and the general support of the Brotherhood of Locomotive Engineers to the Sutherland-Brantley bill. Aside from the engineers' organization none of the others, so far as I have knowledge, has any specific plan or is agreed on any particular measure although in a general way they have declared in favor of compensation. Of the other organizations I do not presume to speak.

Naturally there must be a reason for this state of mind. As nearly as I can express what I believe it to be will be to say that when the railroad transportation organizations asked for a Federal compensation law they did not really understand just what it meant. They were encouraged to ask for such legislation, and did so, even going to the extent of having the Congress authorize the creation of a Federal Compensation Commission by the President, which commission was appointed and gave its best study to the question for two years; it gave its very best legal thought to the drafting of what became known as the Sutherland-Brantley bill. This bill deserved a great deal more consideration than it ever received from railway employees, who accepted the statements of the opposition as true and did not consider the merits of the proposed measure. This bill quite properly was regarded as the best presentation of its kind in admin-

istration, time, and amounts that up to that time had been presented to any of the lawmaking bodies of this country. At the final hearing on the bill the representatives of the organizations agreed with it to that extent, although they did not agree that the benefits were sufficient. They did so in good faith, for they had every reason to believe their organizations really wanted a bill, and they were ready to accept the one proposed as the best for a beginning that at that time could be proposed. But when the measure was presented to the members of their organizations the opposition, inspired wholly by liability lawyers, prejudiced the minds of the men by calling attention to the constitutional injustice that was about to be perpetrated upon them, which was shown to be in the taking away of the right of the railroad employees to bring suit for injuries received when the employer was at fault, but the opposition did not call attention to the taking away from the railroads the same constitutional right to defend themselves against suit in any instance. This proposed taking away of a constitutional right, even though at that time comparatively few railroad employees had the opportunity to exercise it, was accepted as a most serious matter and went far to prejudice the minds of the men against the proposed legislation. They disregarded the disadvantages and the uncertainty of bringing suit, and gave no regard to the certainty of payments for disabilities and deaths arising out of the service, regardless of who was at fault. Then considerable opposition was brought to bear against the proposed measure because percentage payments were fixed on the normal daily wage, which at that time for the bulk of the men in the service was so low that the percentage of payment did not appeal to the men. The normal daily average wage in 1912 for a brakeman or fireman was about \$2.50 per day. The higher wage or "monthly wage" represented time and extra time, but did not enter into any calculation for compensation purposes. The normal day's pay was the basis for such payments which brought Federal compensation so low in amounts in the most of instances that it did not appeal to the men as worth the surrender of their constitutional right to bring suit when the employer was at fault. They admitted it was a gamble, but contended that the certainty was so low that they were justified in taking their chances.

Among other objections offered by the men was that the wage loss in permanent partial-disability cases was so impossible of fair determination that just consideration of the loss of wages for any fixed period was impossible. The inability or the injustice of permitting any authority to fix payment for loss of earnings based on a supposition of what the man might earn in other employment appealed to the men as possessing greater possibilities of uncertainty than even the Federal employers' liability law. The possibility of men receiv-

ing compensation being forced to work during a strike under penalty of losing such compensation appealed very strongly to the men, and while it was not the purpose of the bill so to penalize the men, nor could any such purpose intelligently be read into the bill, the danger of the acceptance of compensation and losing it under these conditions had considerable to do with the opposition of very many of the men. Again, the small amounts fixed for the loss, or the loss of the use, of limbs, hands, feet, eyes, or other injuries resulting in permanent partial disability, did not appeal to the men when contrasted with amounts paid by court order. The possible effect on judgments by adjusters, who would be appointed presumably through their political influence, and the danger of such influence being unfairly directed, was another objection that was forcefully voiced against the bill. The greatest opposition, however, was that at the expiration of compensation payments the disabled employee or his dependents were really worse off than they were when compensation payments were first received. Railroad employees believed that they were entitled to something more than a comparatively low scale of payments for injuries arising out of employment. They believed that they at least deserved as much consideration as goods lost or damaged in transit. They felt that the plan for financially reimbursing a man for his loss of earning power did not relieve the company from its obligations to him as an employee. They held that a railroad company that reimbursed a shipper for loss or damage to his property did not bar that shipper from further business relations with the railroad company, and they believed that, as a similar business proposition, relieved from all assumed financial obligations due to settlement for injuries received, they were entitled to at least the same consideration on these comparative grounds. They also believed that compensation paid for injury or death should be continued during the lifetime of the beneficiary and not be limited to a few weeks, months, or, at the most, a very limited number of years.

What was expected to be one of the most promising features in the bill proved to be one of the most telling arguments of the opposition against it. I speak advisedly in this, for it was the proposition of the representative of the railroads and myself, and was intended to encourage the employer to reemploy a permanently partially disabled employee at something at which he might be assured his previous earnings and fit himself for continuous earning ability at least equal to his former earnings before the expiration of his compensation payments.

The purpose was to furnish employment to such disabled men, and between the going rate of pay and his compensation to bring his wage from the beginning to not less than 90 per cent of his previous wage, which amount was to be guaranteed by a compensation differ-

ence between wages earned and the fixed 90 per cent minimum. For instance, an engineer—and this is based on the time the bill was written—was allowed the maximum wage of \$150 per month for compensation purposes, and if reemployed could not be deprived of compensation unless his wage fell below \$135 per month. Please bear in mind that the average monthly wage, based on the normal daily wage, six days a week, brought the brakeman and the fireman approximately \$62.50 a month, and 50 per cent of that for a limited period only, surely was not an enticing proposition to these classes, which represented the majority of the men.

The fact that employment practically took the greater part of his compensation from him, if he earned up to 90 per cent of his previous wage, was a source of justifiable opposition. The error of denying the disabled, and it was an error although committed with the best of purposes in mind, had much to do with the general objection to the measure. The real idea was to provide a way for the rehabilitation of the disabled man and by training him in some other class of service make of him a wage earner equal to or greater in capacity than he was before his injury. The shops, offices, and other occupations were in the minds of the representatives of the railroads and the men. Afterthought brought to my mind at least the injustice of trading what benefits properly were his, because of his disability, for a chance to earn a living. As a practical and equitable proposition the man should be paid, and as a faithful employee who lost his job through no intended fault of his own his future should have been secured by a job he could fill at a wage upon which he decently could live.

To state the actual opinion of even a majority of the men and give their reasons is something I can not pretend to do, and I know of no one who is able to do more. What we have is that which comes to us as the individual point of view almost always based on the failure to make settlement or bring suit of the disabled or his dependents, or the expression of a convention made without instruction from the membership. Those who can not collect compensation or bring suit always are in favor of a compensation law, but for the most part I think I state the case fairly for those who have not been disabled or the dependents of those who have not been killed, when I say they are indifferent, and if the truth were known I am afraid that the majority still prefer to gamble with the uncertainty of the larger amounts awarded to them through settlements for the certainty of payments carrying the smaller amounts.

To state the attitude of the four railroad transportation organizations, as expressed through their different conventions, is to say: That the Brotherhood of Locomotive Engineers has declared in favor of the Sutherland-Brantley bill.

### The Order of Railway Conductors has taken the position that—

The Order of Railway Conductors does not favor a workmen's compensation law as an exclusive remedy for damages sustained through injury or death of employees of railroads, but it believes that, inasmuch as compensation and liability laws are for the benefit of employees, it will lend its support to any bill that will strengthen the present liability laws, Federal and State, and to any compensation bill satisfactory to those who favor the principle of workman's compensation: *Provided, however,* That said compensation bill shall give the employee his option and election to either claim indemnity under the compensation law or maintain an action under the liability laws, such option and election to be exercised by the employee after his injury, or, in case of death, by his dependents after death; and that we will oppose any efforts to repeal, suspend, or amend the present liability laws, Federal and State, unfavorable to the employee.

The position of the Brotherhood of Locomotive Firemen and Enginemen adopted by their national convention July 1, 1916, can be stated thus:

Our investigation of the foregoing matter develops the fact that the so-called Sutherland bill, which was before Congress at the time of our last convention, was defeated, and at the time few States had compensation laws of any kind. However, at the present time 31 States have enacted some form of compensation law; also Alaska, Hawaii, the Philippine Islands, and the Canal Zone have compensation provisions for certain United States employees.

It appears that the tendency of the age is toward compensation; for at this time a number of compensation bills are before Congress, some of which are more liberal in their provisions than the compensation laws of any of the States.

In view of the many court proceedings arising out of the application of the present State compensation laws and the Federal employers' liability law, as it applies to employees engaged in interstate commerce; also, in view of the foregoing mention of the various State and other compensation laws we are constrained to be of the opinion that the time has now arrived when this brotherhood, in convention assembled, should recede from its firm position taken at the twenty-sixth convention, wherein it disapproved of any sort of a compensation law; and we, therefore, recommend that the matter of legislation having for its purpose the enactment of a compensation law be left in the hands of our chief executive, for him to handle as his best judgment dictates.

The position of the Brotherhood of Railroad Trainmen adopted in 1913, and reaffirmed by succeeding conventions, briefly may be stated as opposed to any form of Federal compensation law.

I have tried to place the position of the railroad organizations before you as briefly and as concisely as I am able. I know that it will be difficult for you, who have been engaged in compensation work to understand fully either the indifference or the opposition of these railroad employees to a Federal compensation law. I believe that a great deal of it is due to the fact that when the question was presented to the organizations it was so vigorously attacked by liability lawyers, and opposed afterwards by the most actively interested of the members of the four organizations, that those of us who inclined toward compensation found little encouragement in further bringing the question to the attention of the members of these organizations,

and permitted them to use their own judgment, adopt their own theories, and fix their own policies, in the belief that whatever finally was accepted by them would be far more satisfactory in a general way.

I know it is going to be difficult for you men who are handling the compensation question in these different States to realize what it means to the man who is injured and is down and out temporarily or permanently, and you can not understand why these railroad employees are so indifferent, but I have tried to state the case plainly and, I hope, concisely. I think I have not told you much that you did not know. And to get back, to give the opinion of those railroad employees on compensation, I could not do it. I am giving you just a very little bit of it that I get personally.

Dr. MEEKER. Was the question seriously considered at your last conference?

Mr. CEASE. No; it was not. Our officers were so discouraged by the action of the 1913 convention, with which I labored a full half day and tried to show to the best of my knowledge the difference between compensation and liability and to explain the advantages under compensation to everybody as against the chance of advantage to the few under the liability law. They then said, so far as I was concerned—I happened to be put on the commission—they said: “Cease, you are all right, and we know you did all you could, and you did a great deal better than we had any idea you could, but we don’t want it.” We quarreled about that thing for a full week at San Francisco and finally had one grand roundup and quit. We are simply against the world and we are against everything. We do not know what it is, but we are against it. Of course that is a sort of humiliating confession to make, but I think we can afford to tell the truth among ourselves. If a Federal law were introduced giving us our choice either way or guaranteeing it both ways, we could not accept it.

Dr. MEEKER. If you do not mind another interruption, is there anything that this body can do, any action it can take, to further the securing of an adequate compensation law covering the railway men? I have this very much at heart. We have a committee on jurisdictional conflicts, the duty of which, as you know, is to consider this question. Is it advisable now to work for a Federal bill to compensate injured workers on our railways?

Mr. CEASE. Candidly, so far as the engineers and firemen and conductors are concerned, yes. The engineers are very much in favor of the Sutherland bill. The firemen are open to conviction and so are the conductors. None of them has any positive instructions to stick fast to what it has so far as I understand it. I think they are all amenable to—well, whatever you might call it—influence

or proper law, that they think will come somewhere near fitting the case. But, as I stated before, it does not make any difference what kind of proposition you put up to us we are opposed to it before you start. Where we get with that I don't know. It hardly seems possible that one organization could hold back the transportation organizations and the American Federation of Labor, which is now most enthusiastically in favor of the compensation bill. But so far as the Brotherhood of Trainmen is concerned I know of nothing, and those of us who did try were so severely man-handled that we have no stomach to try again.

The CHAIRMAN. We will not discuss these papers until after Mr. Mitchell's paper, which is to be read by Mr. James Lynch from New York. Everybody knows Mr. Lynch.

Mr. LYNCH. I listened with considerable interest to Mr. Cease's talk. It so happens that my work in the compensation field is perhaps less than that of any other commissioner on the New York State Industrial Commission. Nevertheless, I did have two cases before me of trainmen that rather illustrated the fallacy of the attitude of the railway brotherhoods in opposing compensation. I presume Mr. Cease knows of hundreds. One of them—a man who, getting off the train, stumbled and lost his arm; no negligence at all. He was simply out—received nothing at all, and arm gone. The other one—husband killed, and widow and three children left, and no negligence. She is out. I was wondering if Mr. Cease could take that widow and three children to the convention whether that would be an argument or not? If she was entitled to compensation, her claim was worth about \$16,000. Now she is working, I understand, trying to help the children, and the children were in an institution. I think that might appeal to the trainmen if they saw that widow and her three little children.

The New York Industrial Compensation Commission delegated to me the task of reading the paper of its late chairman, Mr. Mitchell. The commission felt, out of appreciation of Mr. Mitchell's great abilities, and the work he did for compensation during his lifetime, that his paper should not be presented perfunctorily or permitted to be passed by because of his death, and then later printed, but that the commission desired that it should be presented to the gathering and have its consideration, and on me has devolved the sorrowful task and the great honor of appearing in place of the chairman.

No man, I think, was better acquainted with compensation laws and their enforcement, or labored harder for the betterment of those laws and the advancement of the interests of the wage earner than the late chairman of the New York State Industrial Commission. Therefore, I will read his paper on "Defects in workmen's compensation laws."

## DEFECTS IN WORKMEN'S COMPENSATION LAWS.

BY JOHN MITCHELL, CHAIRMAN NEW YORK STATE INDUSTRIAL COMMISSION.

[Read by James Lynch, Commissioner, New York Industrial Commission.]

### BASIC PRINCIPLES.

A discussion of the subject of defects in workmen's compensation laws necessarily assumes standards of adequacy. Other speakers have considered it from the standpoint of the minimum essentials; therefore what I shall have to say will be rather by way of a review of certain provisions of existing laws that seem to call for change if a full measure of the beneficial results implied by the term "compensation" is to be realized. Commissions, legislators, and other agencies and persons undertaking to draft or enact laws on the subject have used the term "compensation" sometimes with an apparent disregard of the ordinary meaning of the word, since the provisions embodied in the bills and acts have fallen far short of making good the monetary loss sustained by the workman as a result of his injury.

The courts have, with a considerable variety of results, compared the purposes of compensation legislation with those involved in the old liability system. The most authoritative statement and one entirely acceptable for the present discussion is that by the Supreme Court of the United States in the case of the New York Central Railroad Co. *v.* White, in which the New York workmen's compensation law was declared constitutional. The court pointed out in this case that the act "sets aside one body of rules only to establish another system in its place." This involves the granting of certain and graduated compensation for disability, based on the loss of earning power—"that which stands to the employee as his capital in trade." It was held reasonable that the employer, relieved of liability for negligence, should "contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence." On the other hand, the employee can reasonably dispense with "a system under which he assumed the entire risk of injury in ordinary cases and in others had a right to recover an amount more or less speculative," dependent on proofs often difficult to make; in lieu of this he is to accept a definite

and easily ascertained compensation in all ordinary cases of accidental injury, "not being obliged to assume the entire loss in any case, but in all cases assuming any loss beyond the prescribed scale."

#### BENEFITS.

But judgments for damages in amounts of \$10,000, \$15,000, or \$20,000, even if speculative, offer a strong inducement to a large number of workers as against the "reasonable and definite" awards proposed by the compensation laws. There is a real basis of values and amounts which must be mutually considered if the employee is to be compensated in fact and not merely in name; and if the burden upon the employer is not to be such as to destroy business, it being borne in mind, however, that a business whose hazards are destructive of its existence has no right to exist at the expense of its workers.

When laws to establish the compensation system were first considered—and, as a matter of fact, for too long a time thereafter—the employer assumed an attitude of benevolence in proposing to share the burden of the workmen's loss on a basis of equality, and then, on the hypothesis that he was the party who paid the bills, demanded a controlling voice in the formulation and administration of the laws. This position is, of course, indefensible, since the employer alone has the power of distributing his costs and is in no case the bearer of the physical burden entailed upon the victim of the injury. Six States (Iowa, Maine, Michigan, Nevada, New Jersey, and Pennsylvania) this year abandoned the idea of the equal sharing of the costs, but it still prevails in 18 of the 42 States now having compensation laws. It was embodied in the laws of Alabama and Tennessee as recently as this year, and in that of Virginia a year earlier. It is encouraging to note in this connection that 2 (Missouri and North Dakota) of the 4 States which enacted their first laws this year adopted the scale of 66 $\frac{2}{3}$  per cent of the wages as a basis for compensation, and 2 others amended their laws to the same effect (Minnesota and New Jersey). A 55 per cent basis is in use in 2 States, 60 per cent in 8, and 65 or 66 $\frac{2}{3}$  in 11. A different mode of basing awards is in use in the 3 remaining States. Amendments have been proposed going so far as to provide for the payment of full wages as benefits. In my opinion economic and administrative reasons combine to render such a proposition undesirable and impracticable. But no justification exists, in my judgment, for reducing the family income one-half on the happening of a disabling injury to the breadwinner.

Even if we assume that adequate medical and surgical attendance is provided—and this is far from being the universal rule—there is

no margin in the average wage-earner's budget that will permit such a scaling down in the family income without causing intolerable hardship. In other words, the payment of half wages is not compensation for a disabling injury nor for the death of the breadwinner. The danger of an overburdening of industry has been cited as a reason for holding down the rate of compensation, but the burden of accidents actually occurring is not removed or blotted out by the refusal of the employer to assume it; nor has it been shown in any State that the payment of two-thirds wages as benefits has injuriously affected industry. Compensation payments are a part of the cost of production, and as such are distributable, while the worker bears his burden without any such power—a fact which may seem trite to us here, but which evidently needs to be impressed on the employers and legislators of the 20 States which still provide a scale of compensation of less than 60 per cent of the wages, and even the amounts thus nominally fixed may be modified by limitations of weekly maximum payments, duration of payments, specific awards for specific injuries, the distribution to classes of survivors in death cases, and a limited total maximum.

Maximum weekly payments are fixed in most laws, and this was done with some regard to current wage rates and cost of living at the time of the enactment of those laws; but if it was ever true that they were adequate it is true no longer, with the cost of living for an average family far in excess of the \$8 or \$10 weekly rate fixed by several States. Taking it for granted that it is not the purpose of a compensation law to provide luxuries, the fact remains that where a man's earning power is recognized by an existing scale of wages compensation for an injury to him requires a fair approximation to that scale, so that neither the weekly maximum nor the maximum total allowance should be put so low as to work hardship and deprive the beneficiary of awards fairly to be compared with the value of the destroyed earning power.

Very few laws make adequate provision for permanent partial disabilities. It is not enough to consider the temporary wage loss and lose sight of the permanent handicap. The schedules adopted in most States are a partial recognition of this fact, but the great variation shown in them indicates a lack of any real basis. For the loss of an arm, for example, the range is from around 200 weeks in 18 States to 312 weeks in New York, 320 in Wisconsin, and 416 in Oregon. New Mexico pays but 150 weeks. These periods are fixed as the full award in lieu of all other payments. This is without doubt one of the most difficult problems in compensation. The loss of a designated member means much more for one class of worker than for

another, and age is also a factor. But at least no upper limitation of awards should be set that would prevent the administrative body from meeting fairly the conditions in all but the most exceptional cases, even if they should be excluded.

Another defect found in many compensation laws is in the limits set on the term of payments of death benefits. To cut off payments to a widow at the end of five or six years, as is done in 17 States, is simply to temporize with distress; and to continue them for some two or three years additional, which is the prevalent maximum, only puts off the evil day. But six States make the adequate allowance of payment until death or remarriage, and these States alone safeguard the aged widow from loss of support in her time of greatest need.

As an illustration of the limitations fixed by some of the laws I call your attention to a provision in one State (Delaware) of 25 per cent of not more than \$30 weekly wages payable to a widow for 285 weeks, and this is subject to diminution by such period as the injured man may have received benefits prior to his death. This makes the maximum it is possible to pay a widow alone about \$2,100. The laws of other States (New Hampshire and Rhode Island) limit to \$3,000 the death benefits payable regardless of the number of dependents. In the case of a family consisting of a wife and three children aged 3, 6, and 9 years, the husband earning \$15 per week, the maximum possible benefits for his death would fall below \$2,500 in a number of States, the lowest scale (Vermont) allowing but \$1,855. Such a family would receive over \$10,000 in five States and under the Federal statute covering civil employees of the United States. In New York the amount would be something over \$11,000. I can not present my conclusions on this point any more strongly than to say that the New York commission is not satisfied with the present provision of 30 per cent allowed by our law in the case of a widow without children. We have recommended that this be increased to 40 per cent, with 15 per cent additional, instead of 10 per cent as at present, for each child under 18 years of age, subject, of course, to the limitation of 66 $\frac{2}{3}$  per cent as a total. We also recommend that in all cases the basis of monthly wage on which awards are computed be advanced from a maximum of \$100 to \$120. We believe that these changes are necessary to afford the degree of relief that present industrial and economic conditions warrant.

#### MEDICAL AND SURGICAL AID.

A phase of the earlier laws that called for much improvement, and that has fortunately received a considerable amount, is the provision for medical and surgical aid. To limit this to \$25 or \$30 to be expended within the first two weeks amounts practically to a

restriction to first-aid treatment. It certainly forestalls the proper treatment of serious injuries, treatment such as is often necessary to prevent the injured man from becoming a permanent charge upon the fund, the insurance company, or, eventually, upon the State. The increasing allowances, both of time and amount, indicates a growing realization of the fact that a wise liberality is the best economy in such cases, and that attempts to save only result in waste. However, but 13 States provide for such aid for an unlimited time, and three of these (Louisiana, Maryland, and West Virginia) limit the cost to \$150, and one (Wyoming) to \$100. The advantage of a free hand in this respect may be illustrated by a case in which an operation costing \$200 was effective in putting back in active work a man who otherwise would have been totally disabled, entailing a possible charge of \$4,800 on the State fund, instead of costing less than \$500, all told.

Not only cure but rehabilitation should be the object sought. This has been forcibly brought to our attention by the efforts being made in behalf of our wounded soldiers; and, with all due regard for them, I would ask if we owe any less the humane debt of giving back the power of earning a self-respecting livelihood to our injured industrial workers than to the defenders of our country? Little has as yet been done by way of formal recognition of this duty, but it must necessarily receive further attention as we come to understand more fully the economic as well as the humane features involved.

#### WAITING TIME.

The question of when benefits shall begin to accrue, involving also that of the inclusion or exclusion of the cases of brief disability, is closely related to the subject of the amount of benefits. The elimination of the minor-injury case by fixing a waiting time of some length is practically universal in the United States. Both administrative and economic reasons are cited in support of this plan, while over against it is the claim that even the loss of a very few days' wages works a real hardship in many cases. Costs of administration out of all proportion to the amount of benefits involved, the fear that slight injuries will be made the occasion of a brief holiday at from one-half to two-thirds pay, and the desire to conserve the compensation fund for the relief of serious and protracted disability cases are among the reasons advanced in favor of the waiting time. On the other hand, it is true that to cut off all benefits for disabilities of less than 10 to 14 days' duration deprives a large number of injured men of any compensation whatever. Thirteen States provide for 14 days' waiting time. Other periods are 10 days (6 States) and 1 week (20 States); while one State requires 6 working days; one, 3 days; and

in one there is no waiting time. There is a tendency to reduce the period set by some of the earlier laws, changes of this kind having taken place in 8 States this year, and in 9 or 10 others previously. The plan has also been adopted in several States of paying benefits for the waiting time in cases in which the disability continues beyond a specified period. Each of the four laws, newly enacted in 1919, contains such a provision, two in cases in which the duration is more than 6 weeks, one more than 4 weeks, and one where it exceeds the waiting time of 7 days. It must be recognized that there is a temptation to prolong a disability a few days where this provision of retroaction exists, and for this reason the wisdom of such a provision as the last mentioned may be open to question. But if a genuine disability is proved to exist for, say, 5 or 6 weeks, there appears to be no good reason why the fraction of wages paid as benefits should be further reduced by a total withholding of pay for the first week or two. In my judgment the waiting time should not exceed 7 days, the loss of 2 weeks' pay being too serious to inflict indiscriminately upon our wage earners. Then by making the award retroactive to the date of the injury, where the disability exceeds 6 weeks' duration, there is a full compensation provided while at the same time the amount to be gained by prolonging recovery beyond the end of, say, the fourth or fifth week is so small as to be negligible in its influence.

#### COVERAGE.

A word should be said as to the scope of our laws, especially in view of what seem hardly less than flagrant exclusions such as are found in a few States; as, for instance, of lumbering and coal mining in States in which these industries are, respectively, in the first rank of importance and hazard. An analysis of the laws of the various States, by Mr. Carl Hookstadt, of the United States Department of Labor, shows estimated exclusions ranging as high as 69 per cent of the employees within the State. The laws of eight States cover less than one-half their employed workers, while those of nine others cover from 50 to 60 per cent.

Numerically the most important exclusion is that of domestic and farm labor, which is all but uniform. It can not be said that the exclusion of farm labor is justifiable on the ground that it is non-hazardous; but considering the administrative difficulties and the existing situation as to providing insurance, I can not see my way clear to recommend the inclusion of these employments at present. If some practical and inexpensively administered system of insurance were available for such cases, one might reach a different conclusion, but nothing of the kind appears feasible at this time. However, it

seems hardly less than farcical to speak of a compensation system to supersede that of employers' liability, and then make exceptions of such large numbers of workers as are excluded in a number of States. Though our own State originally based its law on hazard, it has been broadened by amendments from time to time until in 1918 a general inclusion of all establishments in which four or more employees were engaged was attempted; the construction placed by our attorney general on the language used in the amendment has militated against this result, requiring four workmen to be engaged in hazardous employment in the establishment in order to bring all other employees within the act. But the hazard of an employment is a question to be considered in the fixing of premiums and not through the withdrawal of protection from the employees engaged in it, whether accidents are many or few.

As to the numerical exemption, while the number of coworkers often affects the risk rate, the setting of too high a number operates to exclude unjustly the employees of many establishments. One State (Tennessee) requires 10 employees and two (Vermont and Virginia) require 11 to make the law apply; while one (Alabama) requires no less than 16. Two (Maine and Rhode Island) call for 6 workmen, and seven (Connecticut, Delaware, Kansas, Kentucky, Missouri, New Hampshire, and Ohio) for 5. It is clear that these higher exemptions, at least, are not in the interest of the worker in whose behalf compensation laws are enacted. The casual employee presents a problem of his own, but the classification of workers as casuals should be closely restricted, inasmuch as the purpose of the law is to afford benefits in the case of injuries and not to provide ways of avoiding responsibility. Whether the ideal is yet attainable or not, it should be kept in view, and the effort should be made to secure every worker against the burden of industrial accidents, which is crushing if borne alone by the individual suffering it, but capable of distribution and an endurable adjustment by a proper system of compensation and insurance.

#### **INTERSTATE AND MARITIME EMPLOYEES.**

The exclusion of employees in interstate commerce that exists by reason of divided jurisdictions will undoubtedly come up for discussion in these meetings, but a consideration of defects in compensation legislation would be incomplete without a reference to the million and a half interstate employees on railroads who are debarred from the benefits of compensation legislation by reason of the failure of Congress to act upon this subject. I presume that most persons here present are acquainted with the decision of our Federal Supreme Court to the effect that the action of Congress in enacting a liability

law fixed the full responsibility of railroads to their interstate employees, so that there is no room for supplementary legislation by the States. It therefore devolves upon Congress to make the needed provision by an act sufficiently liberal to meet the objections justly raised against the bill that was before it in 1912 and correlating as far as possible with the existing State laws. The determination of the question of interstate and intrastate employment is sufficiently complex without the added element of a conflict of systems for the determination of the rights of employees injured on our steam roads.

Another class of workers whose status is primarily subject to congressional control is the maritime employee. This includes not only the seaman or the worker on shipboard but the stevedore, longshoreman, tugboatman, etc. The rights of these workers are fixed by the provisions of the Federal Judicial Code, which gives to the district courts of the United States original jurisdiction over civil causes of admiralty and maritime jurisdiction, saving to suitors their common-law remedies. The decision of the Supreme Court of the United States that this did not permit compensation awards was followed by an amendment permitting an election of compensation in lieu of proceeding in admiralty or at common law. The situation is not yet entirely clear, however, and further legislation is needed, either in the form of an exclusive compensation system or a measure safeguarding the option intended to be given by the amendment referred to. In our experience we have found claimants who have elected compensation dissuaded from pushing their claim and led to accept a settlement far below their compensation rights. The law should place jurisdiction in the administrative authority to keep control of a case once properly placed in its hands until it could assure itself that there had been no misrepresentation of facts and that substantial justice would be done.

#### COMPULSORY OR ELECTIVE LAWS.

The question of the compulsory application of an enacted law hardly seems to be open to discussion. The decision of the Supreme Court of the United States upholding compulsory laws as constitutional without reference to amendments to State constitutions authorizing the enactment of such laws goes far toward warranting the conclusion that there is no foundation for the fear of overstepping constitutional limitations by enacting compulsory laws. Only a law that must be observed and obeyed is really a law. The leave to accept or reject the compensation system permits a wide range of uncertainty and delays the universal adoption of this admittedly superior method of providing material relief to the victims of industrial injuries, yet the number of elective States outnumbers those

having compulsory laws more than two to one, or, to be exact, there are 12 States with compulsory laws and 30 in which there is a power of election, though in most of these election is presumed.

No doubt the action of the Court of Appeals of New York, in declaring unconstitutional our compulsory law of 1910, has had much to do with this preponderance of elective laws. I feel, therefore, under all the greater obligation to call attention to the Supreme Court decisions referred to above and urge the States, by the adoption of the compulsory type, to make the laws effective as a declaration of the public policy of the State.

#### ADMINISTRATION.

But no law will enforce itself. You have already had your attention directed to the need of the supervision of agreements or direct settlements between the claimant and the employer or his insurer, based on the experience under the New York law. No doubt it is desirable to make provision for prompt relief, and it is not always possible for our commission at least, with some 60,000 cases coming before it annually, to reach a decision immediately, so that an arrangement for advance payments and tentative agreements must almost necessarily be resorted to; but the law should provide and appropriations should make possible not only that settlements may be supervised, but that they shall be supervised. The system in vogue in New York during the last four years has demonstrated that the review of the documents in the case is not sufficient. They can harmonize throughout and show no indication of anything but the most complete compliance with the law and still work great injustice. Nothing short of an actual examination of the injured person will safeguard his rights, however specific the law may be.

This, of course, presupposes an administrative commission or board; and it is quite too late in the day, it seems to me, to spend time urging the necessity of such an agency. Yet the legislature of Tennessee just this year enacted a law with no other provision for administration than by the courts; the Alabama commission, charged with the drafting of a bill, in its report a few months ago, likewise argued in favor of such a provision, on the ground that the courts were available locally and would have leisure following the abolition of damage suits by the compensation system, and its new law embodies that provision. Ten States still retain the court system of adjustment, though there is no reasonable possibility of such a system resulting in anything like a thorough and uniform administration of the law or securing to claimants their rights. It is gratifying to note that of the 10 laws of most recent enactment all but 3 provide for commissions, while in New Jersey a bureau was created last year whose duty it is to hear and determine disputes and approve all

agreements for settlement before they can become binding, thus definitely taking that State out of the court-administered class.

Of course, the extent of power granted these commissions varies greatly. In some States they are organized with a view to economy, being made up largely of ex officio members charged with other duties, so that but a single official may be charged with the real responsibility of administration. Their powers may be limited exclusively to the determination of awards or they may also have charge of a State fund, either competitive or exclusive. Going beyond this, they may have general supervision of all industrial and safety legislation, with authority to make and enforce rules for safety as well as for the administration of the compensation law. I hold no brief for any one of these types as the only feasible one. It is self-evident, however, that a law of such importance can not be administered as a side issue to some other branch of the State government; and it is equally obvious that the subject of accident prevention is closely related to that of accident relief; so that it may be said that, with adequate provision for organization, the broader the powers of the commission the more efficiently it can administer these laws.

The duty of accident relief is secondary to that of accident prevention and comes as a sort of apology with reparation for a regrettable incident the recurrence of which should be avoided by all practicable means. Of course, only a limited number of commissions have as yet been granted these broader powers, but I believe it is correct to say that the experience of these commissions has proved the desirability of such a correlation of duties and powers as has been placed in their hands.

With respect to the terms of office of the commissioners administering compensation laws, Canadian legislatures have set us an example that it would be advantageous for us to follow. Some of their laws provide for a 10-year tenure, or during good behavior, as our Federal judges are appointed, and this works for continuity of purpose and the development of efficiency. Six years is as far as any of our laws have gone as yet, a 4-year term being more common. If we on our side of the line can decide to eliminate politics from such matters, we, too, may be able to make appointments of such length as to secure stability of purpose and remove the fear of inexpertness in regard to the administration of State funds that is so often brought forward as an argument against their creation.

#### INSURANCE.

And this brings me to the subject of the State fund as a means of insuring the payment of compensation awards. It is hardly worth while now to insist on the necessity of requiring insurance of some

sort. However, the laws of four compensation States (Arizona, Kansas, Louisiana, and Minnesota) make no requirement on this subject, and as a result the workmen of those States do not enjoy the full protection intended to be accorded them under the compensation system. No serious argument can be made against a provision requiring insurance, but the question of the means by which the insurance is to be secured is in vigorous dispute. State funds are provided for in 17 States, being competitive in 9 and exclusive or practically so in 8, though in 2 of these last self-insurance is permitted. The arguments for and against the exclusive system have been so constantly and so strenuously advanced that any extended review of them is not necessary at this time. The experience of the New York commission with regard to direct settlements during the past four years has revealed the purpose of the representatives of the insurance companies to protect the financial interests of their employers, all too frequently at the expense of the claimant. In the nature of the case the necessity of the stock company to make a profit is in opposition to a full and liberal award; and the desire of mutuals to show large dividends is hardly less an obstacle. It might be pertinent to ask, in view of the often-repeated claim that compensation insurance is being written at a loss, why the companies are so insistent on retaining this unprofitable line of business.

The fundamental proposition seems to me to be that the State has decided upon a system of protection for the employed workers within its boundaries which involves the necessity of insurance. What the State prescribes it should make possible in the most efficient and least expensive way without a toll of profit to any intermediary. The success of the State fund has, I believe, been demonstrated beyond dispute, and the elimination of the friction-producing third party zealous for financial gains can not be other than beneficial to the parties immediately involved.

I have touched upon the failure up to date of the legislatures of six States to enact any sort of a compensation law or of Congress to make provision for private employees in the District of Columbia. These are defects by wholesale, but they scarcely come within the province of this discussion, nor is it claimed that every defect has been reviewed; but those that have been considered, while not of equal rank, seem to me of particular importance. Whatever the opinion of those present may be as to the desirability or practicability of uniform laws in the various States, we are, I feel sure, agreed that there should be just and adequate laws, efficiently administered, to reach the situation, as far as possible, of every worker dependent upon his earning capacity for the support of himself and his dependents who may be injured in the course of his employment.

The CHAIRMAN. We have listened to the paper read by Mr. Lynch, and it is a good paper, and the way the late Mr. Mitchell has discussed the matters in regard to compensation laws and defects in workmen's compensation laws I know will appeal to all members present.

I will call on Mr. A. B. Funk, of Iowa, to lead off in the discussion.

#### DISCUSSION.

Mr. FUNK. I am advised by the program committee that what I might have to say at this hour would deal with the question of legislation, and I was admonished to limit my remarks to 15 minutes.

## LEGISLATION.

BY A. B. FUNK, INDUSTRIAL COMMISSIONER WORKMEN'S COMPENSATION SERVICE  
OF IOWA.

For some reason past ordinary comprehension, the average citizen is inclined to regard workmen's compensation quite as abstruse and inscrutable as the mysteries of godliness. The average legislator is merely the average citizen clothed with a little brief authority. He might have tackled the inscription on the Rosetta stone with some degree of enthusiasm, but workmen's compensation he is disposed to pass up as too obscure and, perhaps withal, hardly worth while. The development of this service in legislation has been so sort of providential the average legislator well might find fitting expression in the words of the familiar chant, "He leads us on by paths we did not know; upward He leads us, though our steps be slow." Compensation was conceived in doubt and brought forth in apprehension. Employers witnessed the installation of its flexible terms and loosely fettered provisions with grave misgiving. Workmen were loth to abandon the tempting lure of the big damage judgment. All hesitated in assuming to "fly from the ills we had to those we knew not of." The wonder is that compensation got any start at all; the greater wonder that, once installed, it has never been abandoned by legislative order.

It is the imperative duty—it should be the unflinching purpose—of administration everywhere jealously to guard jurisdiction. Workmen's compensation is more a service for the establishment of simple justice between the unfortunate victims of industrial accident and the promoters of industrial enterprise than a system for the exemplification of scientific or technical jurisprudence. It is well provided that appeal to the courts may be invoked to insure the exercise of trained interpretation of points of law and to make impossible the abuse of arbitrary authority. But the courts should never be permitted to assume jurisdiction as to department findings of fact where fraud is not involved and when competent evidence is the basis of department finding. In most jurisdictions the courts, from the proceedings in the department files, may catch the spirit and purpose of practical justice established by simple process and tempered by humane consideration. They are not prone to reverse compensation authority exercised with common consistency and interpreted in plain and ample terms in compensation opinion. While the courts

may be, usually the courts are, a very important and valuable factor in workmen's compensation through appeal provisions of the statute, compensation can never reach its best estate where the courts are clothed with original jurisdiction in cases of controversy. Where such administration exists, it has its inception and support in distrust of complete application of fundamental principles and policies—distrust which finds unfortunate expression in proceedings more or less warped and dwarfed, which create an atmosphere in which symmetrical development can not occur.

Of course the basis of administration is legislation, therefore it behoves us to guard well and successfully against assault upon the essentials of service broad and efficient, as well as to devise new provisions for expansion. Compensation is not infrequently as much menaced by fool friends as by actual foes. Philosophers and reformers often aim body blows through want of working knowledge, or perhaps merely through idle supererogation. More frequently it occurs, however, that assault is made on jurisdiction or procedure by designing men who know exactly what they want and how best to manipulate legislation. Because of general want of legislative understanding, and unfortunate legislative unconcern perhaps, the exercise of intelligent vigilance on the part of administration is important; since to be forewarned is to be forearmed, our arsenal may always be well equipped. By enlisting the interest of a few staunch legislative friends legislative misfortunes may usually be averted. By previous understanding between organized labor and the more reasonable elements of employment and insurance we have in Iowa profited very much in movements constructive and defensive. Better a little of compromise necessary to such cooperation than to risk too much in the game of cross-purpose and general belligerency. Commissioners may serve efficiently and unceasingly and rule as men inspired, but if they do not stand unflinchingly and enduringly for the best that may be enacted in law they fall far short of the mark of their high calling.

Compensation laws that have not been thoroughly revised since enactment years ago are usually in need of vigorous overhauling. Iowa is in the throes of code revision. I thought I knew just about how much deadwood our compensation law is carrying until cooperation with our code commission disclosed how much I did not know in this particular. You might smile were I to give you a diagram of the duplication, redundancy, reiteration, and provisions void and unworkable, but doubtless you should cast the beam out of your own optic before making merry over the mote in the Hawkeye.

This is by no means any measure of reflection upon legislative paternity. Early in 1913, when our law was passed, there had been very little experience under this system in the United States. Few

States had enacted compensation statutes. None of these had been fully operative as long as two years. There was little of American precedent or literature or experience available. British reference was by unfriendly influence held to be irrelevant and incompetent, even impertinent. The author of our compensation law had to make his fight for this innovation with comparatively little detailed information, against the advice of friends, against the more or less open hostility of employers, the doubts and fears of workmen, who reluctantly resisted the lure of the elusive and sometimes unique damage judgment, and the indifference of those who entertained no especial bias. For want of information now abundant our author was heavily handicapped in drafting and defending his measure, and because of assault through want of knowledge or artful design he was forced to give up the fight or to put his bill through after it had been perforated by fool friends or crafty foes. The wonder is he was able to win at all, and that his measure was not found to be very much more unworkable than it proved to be. This experience was doubtless duplicated in all States and Provinces entering upon this new field of jurisprudence.

Much as most of our compensation laws need rewriting they are wonderfully improved over early enactment in general efficiency and workable provisions. The workman has been liberally dealt with in increased percentage and maximum and minimum payment, in larger coverage, and in general tendency toward statutory support for the sympathetic tendency of administration. Along these lines the limit of justice in industrial and social burden bearing may have been approached.

The demands of equity, however, would seem to require for the workman wider coverage in individual cases of industrial misfortune. In most States and Provinces, I believe, temporary disability does not run concurrent with permanent disability. It is a mere matter of luck how much a man may realize from the loss of a finger, a hand, or a foot. He may in some cases be able to earn full wages again before the expiration of the waiting period, or he may be incapacitated for months and months. The argument that legislation should say or be interpreted as saying that all contingent misfortune in the loss of a member is covered by schedule payment does not appeal to me. It is only reasonable to assume that payment in case of permanent loss of a member is for the loss of use of such member during life, and not for wages lost during an excessive healing period. Circumstances should not be permitted so disastrously to discriminate between individual cases I have known, wherein the grant for permanent disability was entirely exhausted in weekly payment during the healing period. In such cases it requires all the

nerve I can summon to conceal the chagrin I feel for the wrong my State visits upon the unfortunate workman.

In most jurisdictions accidental injury is a recognized condition precedent to compensation payment. To deny relief in cases where incapacity definitely arises from cumulative cause or from disease solely due to employment is absolutely indefensible in a moral sense. The theory of compensation is that when able-bodied workmen are taken into employment, and due to such employment they are deprived of or impaired in earning capacity, support must be contributed in lieu of wages lost. To confine relief only to cases in which disability is based upon injury due to accident—accident reduced to specific focalized incident—is to reduce much human energy to mere human junk without provision for any measure of salvage. This is positively monstrous and in utter abandonment of the beneficent spirit of workmen's compensation.

The law should provide for a waiting period not in excess of one week, except perhaps in case of expedient similar to that we adopt in Iowa, where we provide that in cases where disability extends beyond the fifth week one-third of the compensation lost in the first two weeks be absorbed, repeating this process at the end of the sixth and seventh weeks.

There should be universal coverage regardless of the number employed in all employments included in compensable relationship. In Iowa we are embarrassed by constitutional limitation which seems to deny the right of compulsory application. Hence we have many thousands of workmen unprotected—a grievous denial which we hope to overcome in the fullness of time. This situation discloses important contingencies: That in a very large proportion of industrial accidents, negligence can not successfully plead against the employer; that a considerable proportion of employers of labor are not financially responsible to the extent of being able to meet heavy damage demands; furthermore, that a slap on the wrist is utterly inadequate to bring many employers to a realizing sense of their obligation to labor and to society.

I wonder why so few schedules discriminate in favor of the major hand or arm when it is so commonly understood that their value is so incomparably higher in actual capacity for service? I wonder why there is so much wrangling over the holding that the loss of a substantial portion of the terminal phalange shall call for payment for half a finger while everybody seems to admit that the minutest fraction of the second joint, lost by accident though usually involving no additional loss of usefulness or earning power, shall count as the loss of the entire finger? I wonder why nearly all schedules provide so many weeks for the loss of an eye, regardless

as to whether it shall be the first eye, which may not affect earning power, or the second eye, which puts the workman entirely out of commission.

While there has not been, and there may not be, any organized effort to promote uniformity in legislation, we are more and more nearly approaching common standards of recognized stability and value. Textual phraseology may vary, but legislative intent continually manifests more of common purpose. Administration may be along lines of substantial difference in the way of doing things, but results accomplished are more and more nearly parallel. We scan with abiding interest compensation proceeding in State and Province, and in our perplexity over unique problems are substantially aided by precedent and precept in the endeavor to establish sound conclusions and higher standards of service. Everywhere there is recognition of common ground in the endeavor to secure to the unfortunate workman all that may be justified by law and the rule of the square deal, while vigilantly striving to purge the service of successful faking. Conscious that "whatever is best administered is best," we like to adapt to the use of our own jurisdiction all that is best of that which is at all adaptable. Without pride of opinion as to statutes or achievement of administration, we should, and we doubtless will, more and more find common ground in legislation and actual service regardless of variation in law or procedure.

Such knowledge as I have acquired in many years of legislative service and in such administrative experience confirms me in the conclusion that the inching-along process is justified by the record of events. Radical measures are almost always disappointing in results. The better achievement of law and administration is founded upon a policy of cumulative growth and consistent development of systems, and service of established character and efficiency, rather than upon a tendency to trust to the plausible promise of alluring experiment.

The sheet anchor of compensation is legislation. In the establishment of the best standards we must find security and support in the statute. We can best contribute to this essential prerequisite by reasonable appeal to the legislature and the public—appeal for a statutory program sane and plain, devoid of class prejudice, suggestive of elemental justice and kindly consideration of the victims of industrial misfortune.

Mr. GARDINER. If I might digress from the printed program, it seems to me up to this very minute that the meetings so far have been rather instructive and beneficial to the most of us. There has not been any attempt made to place this organization on record as to any definite policy relating to the larger ideas and improvements in any

of the compensation laws of the various States. It seems to me that we should, and I hope we will before we adjourn, commit this organization to one or two at least of the principles that have been advocated, that need reforming in the various State compensation laws.

The CHAIRMAN. The next on the program is Mr. Charles S. Andrus.

Mr. ANDRUS. I would like to digress just for a moment and invite all of you who go through Chicago on your return trip to stop at our office. I assume most of you leave here Friday, getting into Chicago Saturday morning, and those of you who do I wish you would let me know. I would like to have you visit our office, and if you will let me know I will try to get some cars and show you the stockyards and other points of interest in Chicago.

I am going to digress in my discussion by discussing the papers. I would like to say for Mr. Gardiner, although it may not be practical or possible for us to go on record, I can say absolutely everyone here is in favor of industrial accident boards or commissions to administer the law; every one of us. We do not need to take any vote on it. We are all in favor of it, and the best thing they can do in Minnesota is to establish a board which has control of the execution of the act; and I can say with absolute truth we are unanimously in favor of it. None of us want to lose our jobs.

The CHAIRMAN. Life appointments, too.

Mr. ANDRUS. This subject of interstate commerce and of compensating the man who is engaged in it is a very big subject. We have been extremely fortunate this morning in hearing the discussion that we have, in hearing it discussed by a legal expert and hearing it discussed by a man who has told you in detail just what has been the trouble in the railroad brotherhoods. Whoever planned this program is certainly entitled to great credit.

We had an experience in Illinois in the enactment of our compensation act: The conditions seemed to be about the same as they are in the railway brotherhoods. The Chicago Federation of Labor, as a general thing, was opposed to the compensation act. This was in 1911. The act was passed in spite of them. From what Mr. Cease has said it seems an absolutely impossible job to get all railroad brotherhoods to agree. But I think in spite of that that efforts should be made. I believe that this association or the members of the association can do a great deal of good. It is beginning to be realized that the public is entitled to some rights now aside from the rights of employer and employee. It seems to be the rage nowadays to have a strike and settle it and raise the price, and employee takes part and employer takes part. The public is certainly interested in this. There is not any member of this association who does not

know personally some of the Congressmen, if he can be notified by Dr. Meeker, and who would not take an interest. They have a multiplicity of data. They get letters on everything, but if we know it in time enough there is not any of us that could make a better use of our time than seeing the Congressmen. They would listen to us because they know we are engaged in this line of work. I know, Dr. Meeker, if we were notified far enough in advance that there is not a member of this association that could not do valuable work in his own State.

Dr. MEEKER. The point is to center that action in Congress. Somebody must prepare the appeal and get it presented.

Mr. ANDRUS. I understand that. You understand, as busy as we are with our duties, there might be a big fight going on in Congress and we not know about it.

Dr. MEEKER. I will see that you know about it.

Mr. ANDRUS. A congressman receives so many letters that I think a personal talk when you can see them when they are home, and explaining matter in detail, is of great benefit.

Those large verdicts are to a large extent myths. I live in Springfield, Ill., a town of about 60,000 or 70,000. We have a great number of coal mines there, several railroads, and I think probably it is the average condition. We always used to have plenty of personal injury suits. From the time I started to practice law until I went on the industrial board of Illinois the largest verdict that was ever received in a personal injury suit was \$18,000. Now, that is rather big. I have no doubt that many a man reading that would say, you can not get \$18,000 under a compensation act. What happened? The judge, under penalty of ordering new trial, forced him to remit \$8,000, leaving a verdict of \$10,000. Case taken to appellate court which reversed and remanded. Tried again by another jury, who gave him \$15,000. Judge then, under same penalty, ordered him to remit \$5,000 and it was cut down again to \$10,000 and went to appellate court and again reversed and remanded, and came back, and another verdict, which was cut down to \$10,000, which went to the appellate court and was finally sustained. That is one of the big verdicts that people read about. They do not understand what actually happens. You can imagine the lawyers earned half of that; no trouble about that. There must have been \$1,000 actual expense in the trial. That is the biggest case we ever had from the time I started to practice law. We keep track of the cases and we know what happened. Many who get big verdicts are in that same condition.

Dr. MEEKER. How many years did it take to reach that verdict?

Mr. ANDRUS. I don't know—four or five. That is your typical big case. The juries will always give a verdict in personal injury cases

if you can get by the judge, but the judge will grant a new trial. It takes four or five years, and of course we all know these things are true.

I just want to say one more thing about this. The great difficulty we find in administration, in addition to all these difficulties you spoke about, is the difficulty of determining whether a man is engaged in interstate commerce or not. It is just the discussion we had yesterday about in the course of employment. Nobody knows. If there could be some method by which this difficulty could be obviated it would certainly be fine. I do not know how it can be done myself. I do not think the law of that State which passed a compensation act that gave railway employees the same favors they get under the Federal act, would be constitutional. I do not think that Illinois could pass an act granting one compensation to railroad men and granting another compensation to miners. I do not think the court would sustain it.

Mr. CLARK. My idea was to have a Federal law providing the remedy for this class of employees.

Mr. ANDRUS. Well, if that can be done. In regard to the defects in compensation laws, as I tried to say yesterday, I think we all recognize the defects in compensation laws. I think, as a practical matter, the trouble is not in recognizing them; the trouble is in getting the remedies enacted into legislation. Of course if the theory of compensation laws is sound there is no reason why they should not cover all employees. We all believe that. That is not the trouble at all. The trouble is we can not get the legislature to enact legislation of that kind.

I want to say a word about direct settlements. I think we are talking more or less about the same thing. I agree absolutely with all Mr. Beers said yesterday, that you can not from a printed report tell whether enough compensation has been paid or not. Now, we follow the same system that they follow in granting awards. The accident report is sent in, duplicate receipts sent in, and those are checked over, and if they do not look all right on their face we investigate the case. I do not see what particular good is gained by entering an award. You do not know anything about it. You take the responsibility of approving something that may not be right, and it means a vast amount of clerical work, and you do not accomplish anything. There are only two ways you are ever going to answer that in my opinion. One is the situation referred to—that is, that the employee himself will object if he does not get enough compensation. Of course that case takes care of itself. That becomes a contested case. But you are not going to answer the other part of it.

There is no question that employers and insurance companies that want to put over fraudulent cases can put them over; make everything perfectly regular so far as cases are concerned. That they do that, they have proven in New York, and we know they do it in Illinois. If there were only one or two or three insurance companies doing it, and doing it repeatedly, they should be forbidden to do business. If they are all doing it they should all get out of business. They are not all doing it. My experience has been they are not all doing it. There are some doing it. But they can do it.

We have a wage scale, a method of determining wages, from which it would take a lawyer and two statisticians to figure out what a man's wages are. If a man works a whole year it is based on his yearly wages. I never knew a man yet that knows what he made the year before. How are they going to find out? They are going to take their employer's statement for it. You are going to O. K.—the only way you can do that is to go over their books. You can not do it. It is not possible. We have over 80,000 a year. You go and check the wages for every man; we can not do it. That is the only solution I can see of it.

A DELEGATE. Might I ask just one question? Take a case where a man was killed. The report showed that he was killed; in 10 days in comes a supplementary report, where they had settled by agreement and they paid \$500. What would you do in that case?

Mr. ANDRUS. We would not recognize the payment at all. We would not give credit for \$500. The law provides that we shall O. K. all agreements and no lump sum shall be paid without our consent. We had a case in which we gave an award of \$2,500 and the lawyer went and settled for \$1,500 without our consent. The case proceeded and we gave him no credit, and we trust and think it will be confirmed by the Supreme Court. We do not recognize any release or settlement of any kind until they have our approval.

The CHAIRMAN. I am going to call on Mr. Bohlen. That paper of Mr. Cease is a very good paper, and we should have more discussion in regard to that particular phase.

Mr. BOHLEN. I shall speak very briefly of our experience in Pennsylvania with the interstate commerce cases. They have given us more trouble than any other class of cases that we have had. The differences of fact which determine whether a man is engaged in interstate activities or intrastate activities are exceedingly minute even under decisions of the Supreme Court as they stand at present, and with each decision that comes down from the Supreme Court the confusion becomes more and more involved. The Supreme Court apparently, at the time that the Federal liability act went into effect, had a natural desire to construe every activity as being interstate in

order to give to the workman injured in interstate commerce the protection which our Congress had designed to give him. With the coming in of compensation in the States we find rather a tendency on the part of the court to back water and to reconsider, or what looks rather like reconsidering, some of their earlier decisions. At present, particularly in respect to the status of a man engaged in repairing an engine or in switching, or in very many other activities, it is exceedingly difficult to tell whether a man is or is not engaged in interstate commerce.

I want to say in regard to Mr. Cease's paper that we have in Pennsylvania one great railway, the Pennsylvania Railroad, which, from the beginning of our compensation activities, since the act was first passed, has consistently waived the interstate character of its operations; and while, perhaps, the matter is really out of the jurisdiction of the board, the board has been approving all agreements as being made in conformity with the standard set in our compensation act, though our approval in those cases in which the accident is really interstate is, of course, a mere nullity, but it satisfies the claimants in such case that they are being properly treated, and a great number of settlements have been made; and comparatively few cases have been brought under the employers' liability act. Many of the trainmen, of course, are working for the Pennsylvania Railroad, and we have as yet received no sign of any protest against that system on the part of the Pennsylvania Railroad. The Reading Railway, on the other hand, has not taken that position and defend all their actions. We have a very great—or had before the Winfield case came down—a very great number of claims brought against the Reading Railway, and many of them were switchmen and brakemen. In some of them there were cases where action might well have lain under the Federal liability act. I feel, therefore, that there is a slow campaign of education going on in our State, and that if a Federal act is proposed which meets some of the objections, which I think were well taken by the trainmen—an act which will conform to the advanced standards of the present day, and which will vest the administration in an independent commission, a commission independent of the courts, from which the trainmen have in the past received treatment which to them appears to be a raw deal—I feel that the trainmen's objections may be at least minimized.

We met an assault from the accident, ambulance-chasing lawyers in this session of the legislature in Pennsylvania. Those men we have with us always and they are always potent in legislatures for some reason. They attempted to recreate a right of action in the event of the employer being guilty of breach of safety laws—which would give them an opportunity for the collection of large fees.

I know that our commission will earnestly cooperate in any effort to solve the problem of reducing the interstate operations of railways to a compensation basis—particularly if it is an act which will include also intrastate activities so that the worker in those doubtful cases, the trainman in those doubtful cases, may not lose his right by electing the wrong forum in which to claim compensation. There should in any such act be a provision inserted that a recourse to a State compensation act should not be taken in account as part of the statutory period within which an action should be brought. Some protection of that sort to prevent the loss of rights through the selection of the wrong forum should be contained in any such act.

The CHAIRMAN. The discussion now will be limited to five minutes and must deal directly with the subject of interstate commerce in regard to railway employees and other employees, but that particular phase.

Mr. BEERS. I want to suggest a difficulty and trouble which must be common to all of us along these very lines. In order that I may get help—I have no help to give to others particularly; I would like to get help from others; a man who has been injured in railroad work comes before the commissioner. Personally I do not feel that I should take the responsibility of telling that man whether he has probably been injured in interstate or intrastate work. It seems to me that the responsibility should lie with him, and that he should select his own adviser, because, as Mr. Bohlen has said, it is exceedingly important that he choose the right forum, and if he does not, his rights may be seriously prejudiced. Of course if it is intrastate he comes before the board, if he comes anywhere in the State. If it is interstate he goes before the court.

The way I solve it, and it is not a very good solution, is this: I write a three or four page letter—it is generally a form letter—and then there come in his advisers and friends, and then if he chooses to come back he will get advice from the office. But in the first instance we do not force ourselves into the position of being his adviser. If he comes back and desires to make a claim, of course he goes on and makes it and it is dealt with as an intrastate case.

So far as the waiver of the railroads is concerned I think that is rather a rotten reed to lean on. I find myself that the railroads were apt to regard as intrastate cases the cases where they might be subjected to a big claim for damages, and as interstate cases the cases in which they thought they might have a good defense. Therefore the waiver is a very rotten reed to lean upon.

Mr. BOHLEN. I want to say in respect to our experience on the Pennsylvania Railroad that they entered into this agreement at the very beginning of our compensation-act activities, and in no case

that I know of have they at all withdrawn from their agreement or in any way acted other than in the utmost good faith. They have submitted themselves to the jurisdiction of the referee and of the board in outside cases, and they have treated all their operations, whether intrastate or interstate, as within the compensation law; but, unfortunately, they are the one railway in our State which has done that.

Mr. BEERS. You understand, I am not criticising anybody. It seems to me justifiable tactics for a man to take the course that railroads have taken. A litigant in getting out of his troubles in any honorable way I do not intend to criticize, and do not criticize.

Mr. FRENCH. In California we had a very interesting decision regarding this question. A man was killed working on one of the railroads, and application for compensation was filed with the Industrial Accident Commission of the State of California. We awarded a full death benefit (\$5,000), and the widow's attorney filed a request with us to hold the case in abeyance until he could try and see if he could recover money in the courts on account of it being interstate, as he called this injury. But the supreme court did not give him any help there, and the result was that the case was remanded to us, and our verdict was upheld. Here is a situation where the claimant first applied for his compensation, and then said please hold it to see if I can get anything more than the \$5,000 out of the courts, and if I can not get that I will come back to the commission and collect my \$5,000. That is something rather unique.

The CHAIRMAN. As I understand, that would not be possible in Connecticut?

Mr. BEERS. No; I did not express any opinion on that at all. What I say—you always hazard your rights by taking any course of action. I think that is pretty raw for the employer to be put up and have two shots fired at him.

Mr. FRENCH. You misunderstand me; the supreme court would not listen to his claim at all.

Mr. BEERS. It is a pretty serious position you place yourself in—and when I say you I mean us—I do not mean it personally at all—when you undertake to give the widow, whoever she may be, advice which may knock her out of a very large verdict, or, on the other hand, which may knock her out of her compensation; we try to throw the onus of that on the person who comes before us. I do not intend to take any definite position on the question of law.

Mr. WILCOX. I regret we have not an opportunity for quite a lengthy discussion of this subject because it is one of the real tantalizing ones. I realize perfectly well that the question of whether

or not a man at the time of the accident is engaged on interstate as distinguished from intrastate commerce is a perplexing one, but still for the great bulk of the employees, their status may be determined by just understanding a few cases. Generally speaking, every trainman is engaged in interstate commerce. It is a very rare case that he is not engaged in interstate commerce. Every track repairer, generally speaking, is engaged in interstate commerce. Every shop employee working inside of the shop is engaged in intrastate commerce as distinguished from interstate commerce. Every car repairer, every repairer of the rolling equipment out on the tracks—there is where you will get your border-line cases; he is engaged in interstate commerce if the repair is necessary to the carrying onward of the car, putting it in action; otherwise it may not be a case of interstate commerce. So that with a knowledge of a few of those general principles you can tell where a general case lies.

I opposed at the Columbus convention the Pillsbury plan of handling this situation, which was to have a Federal act giving to the employee injured in railway work the benefits of compensation in the State in which he was injured if that law was competent—or what was the wording?

Dr. MEEKER. Adequate.

Mr. WILCOX. What is an adequate law? I did not want that. I wanted, if anything, a general Federal act, not only because I thought this word "adequate" was going to be a serious one, but I thought there were few of our acts, none of our acts, that were adequate at that time, and I wanted a Federal act which would at the same time give us a standard to work to. So I opposed the Pillsbury plan, and I have never regretted it for one single minute; and subsequent developments have led me to conclude I was on the right track then. But the thing I am objecting to, and this is a serious thing in all of our States, is the fact that railway companies will juggle with the situation, and because of this mass of conflict the employee does not know whether he is under the one or the other jurisdiction, and they use these things to bear down upon the employee. It is used as a sort of common duress more or less. We see that thing going on in our State continuously, and I am really almost to the point—I have said to railway people in our State that I wish the Wisconsin Legislature would take railway employees, even though engaged in intrastate commerce, out from under our act, and I stand right there at this very moment of really advising it; not because I am opposed to compensation, but because I object to any system which gives any employer an opportunity to treat his employee that way. I want him to get somewhere and stay there. That is my thought with respect to the situation.

I am willing to support a Federal act, but I want to know what that act is beforehand. I don't want it to be the best act in the United States. I want it to be something above the best act that is in existence in the United States to-day. Wisconsin is getting almost to a point now where we can not get another amendment. The last session of the legislature stood up against us because we are well up to the top. We are handicapped now because other States are away down below what Wisconsin is paying, and I want something better to look to.

Dr. MEEKER. I am ready to go to the bat any time on the proposition that a Federal law covering all railway employees, regardless of what kind of commerce they are engaged in, shall be enacted. I think it would be held constitutional. Very keen constitutional lawyers say that it will be held constitutional, in exactly the same way that the law providing automatic couplers and air brakes applies to all cars, irrespective of whether they are engaged in interstate or intrastate commerce. That is the only solution that promises to solve the interminable tangle resulting from trying to distinguish between intrastate and interstate commerce.

Some hold that a constitutional amendment is necessary before such legislation will be effective. I do not believe it for a minute. Let us try legislation first, anyhow. Let us put a statute on the books providing compensation protection for all railway employees, regardless of interstate and intrastate commerce, and let us see whether the Supreme Court will declare it unconstitutional. I do not believe they will. I wish that Mr. Clark would speak to that point. I know that he has cases in mind and can give us a good idea of where we are at.

Mr. CLARK. I was just going to ask Mr. Wilcox if he could tell me whether a man at work building an extension to a train shed in which interstate cars were being stored was under the Federal law or State law?

Mr. WILCOX. I think under Federal law.

Mr. CLARK. Yes; but he is not doing anything—

Mr. BOHLEN. Have you any decisions on that point?

Mr. CLARK. Yes; exactly.

Mr. BOHLEN. What is your jurisdiction?

Mr. CLARK. It is a Kentucky decision.

Mr. BOHLEN. It is only a Supreme Court decision I would listen to.

Mr. WILCOX. I do not think there is any serious doubt where that case lies. I think a man who is at work building equipment to take care of that interstate car—engine roundhouse is a good illustration; repair of the roundhouse to keep that car fitted up is engaged in interstate commerce.

Mr. ANDRUS. I was going to suggest that this be put over until----

The CHAIRMAN. This is the point of view I take in regard to this discussion: We have gentlemen here from all over the United States. We may not get them together again. This is a very interesting subject for them, so that I feel like giving them all the time possible to discuss it here.

Mr. CLARK. I do not want to take time. The fact is this: I have this address printed a little earlier than the completion of my study, so that I hope the revised copy will be read by those who are interested in this subject. I call special attention to the decision in the *Southern Railway Co. v. United States*, 222 U. S. 20, 32 Sup. Ct. 2. In this case they were construing the very act that Dr. Meeker referred to governing appliances "used on any railroad engaged in interstate commerce," and they go on to say:

Cars are seldom set apart for exclusive use in moving either class of traffic, but are generally used interchangeably in moving both. The situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent, for whatever brings delay or disaster to one or results in disabling one of its operatives is calculated to impede the progress and imperil the safety of other trains.

Mr. BOHLEN. What was the plaintiff's name in that case?

Mr. CLARK. That is *Southern Railway v. United States*. Then there are two cases—one in 1916 and one in 1917—in which the Supreme Court, it seems to me, opened the door for the very thing that Dr. Meeker referred to. I have the greatest desire in the world to see a complete law enacted, but I would enact it so that the interstate part would stand even if the other went off. But I would have strong hope, very strong hope, that the entire law would stand the test of constitutionality.

Dr. MEEKER. What are those two later decisions of the Supreme Court you referred to?

Mr. CLARK. The *Rigsby* case, 241 U. S. 33, 36 Sup. Ct. 482; that was in 1916; and then the *Behrens* case, 233 U. S. 473, 34 Sup. Ct. 646. And while the *Behrens* case went against interstate employment, because the court says the act of 1908 limits itself, unnecessarily limits itself, he says the law of 1906—the decision of 1908 on the law of 1906—is not to the contrary; that the power of Congress to enact a law of general coverage reaches to whatever is likely to affect interstate commerce. Therefore the law was simply declared unconstitutional because it attempted to regulate the liability of every carrier in interstate commerce, whether by railway or otherwise, for any injury to any employee. If the law is so framed as to correct that condition and not go beyond it, I do not see but what

the court has practically invited Congress to enact a law on that point.

The CHAIRMAN. Any gentleman who has not yet spoken who would like to say a word?

Mr. HOAGE. Intrastate is really within the bounds of the State. I can not see where the difficulty would be in distinguishing between the two. We never seemed to have any trouble in Washington or Oregon.

Dr. MEEKER. You never had to administer a compensation law. There is immense difficulty, and the courts have reduced the situation to a perfectly hopeless tangle. The only way of cutting the Gordian knot is to enact a Federal law that will protect all railway employees regardless of intrastate and interstate.

Mr. HOAGE. I thought we administered a real compensation law.

Mr. ALLEN. The feature of the subject discussed by Mr. Cease is not of interest to the gentlemen of law or gentlemen of medicine who are discussing these tangled questions, but it is undoubtedly of interest to us fellows in the backward States especially—that is, with reference to the attitude of railway employees. Now, we may pass that over as a subject of small importance, but as a matter of fact in some of the Southern States, and possibly other States, the attitude of the railway employees has had a decided effect in the matter of enacting workmen's compensation laws. The fact that railway employees—I say this with the best friendship for them—the fact that railway employees are indifferent to passing compensation laws has had a very strong deterrent effect in certain States in regard to the enactment of those laws. I think I can confidently say that it has delayed the workmen's compensation in Tennessee for some years, and probably would have delayed it longer if the legislative commission of the Railway Brotherhood had not been finally induced this past year to support the measure before the general assembly.

The CHAIRMAN. We meet this afternoon at 2 o'clock. The session this afternoon will be given up to the discussion of medical matters entirely.

## **WEDNESDAY, SEPTEMBER 24—AFTERNOON SESSION.**

**CHAIRMAN, F. D. DONOGHUE, M. D., MEDICAL ADVISER MASSACHUSETTS  
INDUSTRIAL ACCIDENT BOARD.**

### **MEDICAL SESSION.**

The CHAIRMAN. Before proceeding with the papers under the medical section, and while I have the opportunity to say a few words without the permission of the Chair, I would like to give expression to one or two thoughts in my mind.

Yesterday while our able secretary-treasurer was speaking about the medical committee, and making other interesting observations upon the evolution of a good idea into the form of a paper, I was compelled to wonder if it was the "water" in Toronto that had taken the "meek" out of "Meeker" and made him the belligerent fellow he appeared to have become. I have consulted experts on the point, but have as yet failed to receive a satisfactory explanation.

However, the question of medical commissions and committees has opened up an interesting subject for thought and discussion. If the medical committee formulated a scheme of procedure, I doubt if there is a single commission of this association that would adopt it. That committee does not really need heroic treatment, but requires to be relieved from the heroic treatment accorded it by Dr. Meeker and other physicians.

Medical advisers lack standing in the matter of enforcing their opinions. Industrial commissioners administering the law are prone to disregard medical testimony as far as possible. They are prone to arrive at their own conclusions on legal piffle without regard to what the medical facts are, and I doubt if they have as many cures (as the compensation laws show) as the medical profession.

The compensation law is based not on legal precedents and hot air, but upon the problem of restoring the crippled workman. The workmen's compensation act, to my mind, contemplates insuring the wage-earning capacity of the man, and not in trying to determine his rights under various precedents. The greater the number of hearings and administrative meetings you have the greater is the indictment of your system of administering the workmen's compensation law. With 100 per cent efficiency the number of hearings would be so small that the services of a great many commissioners would be dispensed with, but that means taking into your councils a

competent medical adviser who would investigate injuries and supervise the medical treatment thereof in the first instance, instead of passing upon the mistakes and complications as an end result.

Now, before proceeding with our program I would like to request the medical speakers and others who discuss the technical papers to refrain from using technical terminology except when it is absolutely necessary to do so, and to try to translate their meaning into English, so that the reporter, and also some of the members, will have the opportunity of grasping the points discussed.

I now have much pleasure in asking Dr. J. W. Mowell, chairman of the Medical Aid Board of Washington, to read his paper entitled "Disabilities as aggravated by preexisting conditions."

## DISABILITIES AS AGGRAVATED BY PREEXISTING CONDITIONS.

BY JOHN WILSON MOWELL, M. D., CHAIRMAN OF THE STATE MEDICAL AID BOARD OF  
THE STATE OF WASHINGTON.

I am particularly pleased that Dr. Royal Meeker should have assigned this subject to me for my paper, as it is a subject that early attracted my interest when I was appointed medical adviser to the Washington State Industrial Insurance Commission eight years ago. In the intervening time "disabilities aggravated by previous existing conditions" have been almost daily referred to me for a decision, and I am glad to be now placed in position to give the results of my observation, assembled though it is in the brief space made necessary by the time allotted this paper. You will understand that I am confining my remarks entirely to the conditions that have passed under my personal observation during these eight years, and if I have made omissions or failed to give emphasis to certain special conditions which may arise in your minds, it is because of this fact. I am not delivering an assembled paper, but am dealing entirely with conditions that I have reviewed, and the conclusions here presented are those of my own deduction as the result of my own experiences as I now recall them.

In calling attention to some of the conditions in which we find workmen following gainful occupations, which complicates their condition when accidents which bring them under the compensation act are sustained, I will confine myself to the conditions that have arisen, excluding the diseases generally known as occupational diseases, which are many but are excluded by the Washington act.

The handicapped workmen are very numerous when you consider them as a class and they come under your observation as medical adviser to an industrial board. This has been forcibly emphasized by the war draft and was one of the problems with which the advisory board had to contend.

For convenience we have divided these conditions into three classes:

First. Congenital defects.

Second. Previous injury leaving a handicap.

Third. Disease or condition existing in the individual prior to accident.

*Congenital defects.*—Under the heading congenital defects we have all the forms of defective vision complicated in the workman who receives an injury to the eye. He attributes all of his reduction in vision to the accident. Not having previous record of the individual's eye, it becomes impossible for the examining surgeon to state definitely just how much reduction of vision is the result of his accident and what his standard of vision was previous to the accident. It is often complicated with astigmatism, strabismus, or a congenital or acquired nystagmus that is not easily separable. This leads almost necessarily to a rating for disability as found.

Then we have defects in hearing which seem to be clearly of long standing, and in all probability not increased by the accident. The workman, however, actually has an injury to the ear, and we are confronted with the same condition as in the case of injury to a defective eye.

We also have defects in development of the skeleton and resulting deformities. When one of these individuals has a fracture or some injury that leaves permanent partial disability as a result it is a great deal more serious than it would be in a perfectly normal individual, and the handicap is greater.

We also have what is known as "drop heart," where the normal "field of response" for the individual is far below the average. So we are apt to have a condition which the injured workmen attribute to their accident, when clearly the accident had nothing to do with it.

The patulous inguinal canal is a serious hazard to a workman, as it is the cause of 99 per cent of the so-called hernias from accident. It is so well known that it needs no discussion here that a true traumatic hernia is practically unknown, but hernias that come as a result of strain, lifting, etc., have been long in their forming, and their actual appearance through the external ring at that particular time called attention to it. You will often get a history of stinging pain in the inguinal region extending back for months or years, but the courts are prone to hold that a hernia that makes its descent while the man is engaged in his usual occupation, associated with some lifting or strain at the time, is accidental. We have had considerable trouble arising from undescended testicles where the individual claimed injury and the latter condition was found.

We also have had some experience with a unilateral kidney, where examination of the individual receiving an injury revealed the fact that he had but one kidney, and that one not normal, damage from accident presumably, making the case hard to dispose of in an equitable way.

Then we have been confronted with multiple fingers and toes, and the question arises whether the loss of the supernumerary finger or toe is really a handicap and upon what basis it should be adjusted.

This brings us down to the individual who has inherited an unstable nervous system with its many angles and complications. Accident leads to anxiety and apprehensions in the individual, which are not well founded but largely imaginary. If such an individual has an accident, he becomes a rather troublesome claimant, and to satisfy him is usually out of the question.

*Previous injury leaving a handicap.*—Under this heading come all the individuals who have suffered injuries and who have permanent partial disabilities, or are considered as having such under the compensation act, that have left them subnormal and very much in the same position as the congenital defect, with this exception, however, that we are in a better position to separate the former handicap from the present condition, as it is much more apt to be apparent upon examination and there may be a record of previous condition.

*Previous conditions or disease.*—First, we have those relating to the eye. We have seen hemeralopia (night blindness), nyctalopia (day blindness), and psychic blindness in individuals claiming these conditions following bodily injury that could have no connection whatever with their condition. They were either congenital or acquired. We have seen the following conditions in individuals who have claimed that they had some foreign body in the eye, such as cinder, dirt, or even cottonseed oil splashed in the eye: Optic atrophy, choroiditis iridocyclitis, cataract, corneal ulcer, interstitial keratitis, glaucoma, trachoma, pannus, ectropium, trichiasis, distichiasis, chalazion; and a great number have claimed accident caused ptosis, associated with paralysis of the facial nerve, that was not brought about by accident, but was due to exposure. Then we have the individual who is subject to migraine and who is often honest in his opinion but claims the attacks are much closer together and more severe than they were before the accident.

We have deafness caused from otitis media or chronic pharyngitis, occlusion of eustachium, and otosclerosis, associated with an injury to the head or ear where it is impossible to say in what condition the individual was previous to the accident. A very large per cent of them will insist that their present condition is all due to the accident, when from a medical point of view it is quite clear that very little, if any, of the condition is the result of the accident. We also have labyrinthian disease, which is very hard to separate from the condition that the man may have following a fracture of the base of the skull. It becomes necessary to attribute all of his trouble to the accident, not having previous examination.

*Static abnormalities.*—Where we have an injury to the spinal column that of itself is of minor importance, because the gross lesions are easy to separate, we often have it complicated by one of

the following: Chronic torticollis, scoliosis, lordosis, kyphosis, atrophic and hypertrophic arthritis, sacro-iliac relaxation, calcification of ligaments and chronic lumbago. Then in slight injuries to the soft parts we often find them associated with chronic rheumatic bursitis, an injury to the hand or arm associated with a subacromial or subdeltoid bursitis, or the subcutaneous bursa of the acromion or subcoracoid. In injuries in other regions we find the subgluteal bursa involved and often the prepatellar bursa, the workmen claiming an injury when it is not clearly definite that there was one. The bursa over the olecranon is often involved in miners and other workmen, where the condition is clearly occupational. Quite frequently we find the subcalcaneal bursa involved.

We are often confronted with a chronic dislocation of the shoulder. This comes up as an accident when in reality there was no real accident in connection with it. These joints have been in the "habit" of slipping out for years, and the joint becomes so relaxed that it slips out even in normal movements, and claim for same comes before the commission as an accident.

We have minor injuries claimed to the knee from strain or twist, and we find a fibrosis of joint or a synovitis that is undoubtedly a chronic condition which makes the joint more susceptible to slight injury. It is very common to find osteocartilaginous joint bodies in the knee, elbow, or shoulder—more commonly in the knee—which become aggravated or start up an acute condition that causes the workman to make a claim for compensation. Then we have fibrous osteitis, for which we get a claim as an accident when it begins to give the individual trouble; osteomalacia, which is occasionally the cause of pathological fracture and which is not connected with any accident other than the mere fact that the bone broke. We had one case in the last few months where the man firing a donkey engine turned around to pick up some wood and had a fracture at the middle third of the femur. In such cases normal healing is retarded, resulting in considerable deformity as a rule.

*Feet.*—Preexisting conditions in feet usually present quite a problem. When an individual who has weak arches or flat feet receives an injury which puts him in bed, lowers his vitality, gives him a general muscular weakness, recovers sufficiently to be on his feet, he is very apt to begin to complain of pain in his feet and in the calves of his legs. He attributes this to his injury, and although we find that he had a broken arch prior to his accident, which is often demonstrated by his shoes, he will contend that the condition is much worse and that he did not have the pain before; and, in fact, his feet may be worse, although they were not injured. We often find that a man who has a weakened transverse arch or a broken trans-

verse arch in connection with a broken metatarsal has a very painful foot and may be more disabling than a weakened longitudinal arch. The man who has hammer toes and who has an injury in the region of his foot usually insists that that condition gave him no trouble until after the accident. The individual having bunions, hallux valgus, hallux varus, or hallux dolorosa (painful toe) will often claim total disability from pain.

In slightly injured fingers we often find Dupuytren's contraction, which has made the fingers almost useless. These individuals are apt to think that they should receive full compensation for the fingers. A number of times we have been confronted with progressive muscular atrophy in the hand associated with a minor injury where it was plainly evident that the muscular atrophy was there before the accident and may have been the real cause of the injury's being sustained at the time. As time goes on and this becomes worse the individual is sure to claim that the entire condition was the result of that injury.

Then we have the epileptic who has sustained an injury and in the course of two or three years his epilepsy has become more frequent and decidedly worse and he comes back claiming it a result of his accident. Individuals who have been insane often become insane again following accident, and their friends attribute the insanity to the accident. We often find chronic neuritis associated with an accident persisting long after the injury has become well, but they are very prone to attribute the neuritis to the injury received. Tumors of the spinal cord have been claimed as result of accident. Upon operation a condition was found that could not have resulted from accident.

*Syphilis.*—Prior to the time that I became medical adviser to the Industrial Insurance Commission I was of the opinion that if a man contracted syphilis and had an injury follow at any time subsequent to the contraction of the disease, the mere fact of his being a syphilitic would influence his recovery from injury. From observation under the compensation act I have come to the conclusion that in the case of an injured man who is a syphilitic in the secondary stage, or at any time prior to the tertiary stage, wounds of the soft parts or fractured bones heal as readily as they do in the individual where syphilis is not demonstrable. In the cases that have frank tertiary syphilis it does have a great influence on repair, and in these cases the active treatment of the syphilitic condition does not appear to influence their recovery to any great extent, or at least much less than textbooks would imply.

In this we have tabes dorsalis with all of its wake, complicated with accident; nerve arthropathies (Charcot's) coming up as a complication where the man was working and had trouble with the knee

while at work and it was later found to be a Charcot joint. Then we have rheumatism and rheumatoid and atrophic arthritis in the individual who has had some slight accident which laid him up for a time, and his chronic condition is hard to separate from the effect of the accident received.

Among the large classes of persons who file claims for accidents are those suffering from cardiovascular disease, aneurism, varicosities, angina, pernicious anemia, diabetes, toxic goiter, nephritis, gall-bladder infections and stones, enteroptosis, intestinal stasis, abdominal adhesions, pleuritic adhesions, gastric ulcers, chronic appendicitis, rectal fistula, hemorrhoids, amebic diarrhea, urethral stricture, pyelitis, stone in the kidney, hydronephrosis, hematuria, orchitis, epididymitis, varicose ulcers, perforating ulcers, eczema, ichthyosis, elephantiasis, leprosy, sarcoma, carcinoma, tuberculosis, neurasthenia, hysteria, low mentality, and age.

*Goiter.*—Goiter in some of its forms is quite common in the Washington workmen, especially in the mountainous section of the State. We often see whole families afflicted with it. At one time I saw a family of seven, ranging from 8 to 22 years of age, where everyone of the children and the mother had an enlarged thyroid gland. In one section of the State it is claimed that even the pigs suffer from toxic goiter and die as a result of same.

We see a great many workmen who have some apparent thickening of the thyroid, accompanied by rapid heart action, nervous symptoms with more or less tremor with no exophthalmus. They will become excited in talking about their injuries, complain of profuse sweating, fatigue, etc., which with our present knowledge of hyperthyroidism would lead us to a conclusion that these symptoms are due to a toxic thyroid and not attributable to the accident. They, however, will contend that although they had the enlarged thyroid that they did not have the other symptoms until after the accident, which has often brought the question in my mind whether it is not a fact that in an individual who has a mild form of iodotoxination an injury leaves his system less tolerant to an increased amount of iodothyryn and results in an aggravation of the symptoms.

This subject at present is under investigation in the State, and we have a few medical men giving their entire attention to this subject.

*Low mentality.*—Low mentality in the individual workman complicates a claim for compensation much more than anyone at first thought would suspect. In my experience he has about two thoughts that seem to have become entirely fixed in his mind. The first one is that there is a law compensating a workman for injury; second, that he had an accident resulting in injury. Through misconception of the law and lack of confidence in his advisers he thinks the com-

pensation act is a game in which he is a player and it is only a question of win or lose, and he will not listen to the explanation of the application and intent of the law. He is not satisfied with time loss, but insists on being paid some amount because he was accidentally injured, and will not attempt to take up any gainful work because he thinks he knows of some individual who has had a similar accident and received compensation in addition to time loss. Any explanation offered to explain the difference between his claim and those to which he may refer he attributes as being used by the commissioner to win in the contest in which he feels he is a contestant. Such claimants often boldly assert that they are not receiving justice because of the fact that their cases have been poorly presented to the commission.

After going away they are very apt to return and ask to have their claims reconsidered. In the meantime they have hatched a new brood of reasons why their claims should be reconsidered, and end by being very much dissatisfied, declaring that there is a good reason for being a Bolshevik.

*Age.*—If an aged workman has a moderately serious accident, which incapacitates him for a month or two, as a rule, he comes to the conclusion that he is not able to return to any kind of work. In fact he is not able to do much work and was not at the time of injury, but he is certainly not entitled to a pension the rest of his life owing to the fact that he may have been working only a short time in a hazardous occupation and the injury was not sufficient to incapacitate a workman, the effect of age not being considered.

In the neurasthenic we have an apprehensive type of individual, one who is always magnifying his condition and is very talkative, using a deluge of words in which he complains that there is a misconception of his condition on the part of everyone coming in contact with him; that he is not getting a square deal; and that his accident has entirely destroyed his capacity for work of any kind. So he will augment and magnify his symptoms, always asserting that things are worse than ever, and back of all this he seems to have one single idea, that is, "How much compensation can I possibly get out of this?"

Then we have the hysterical person, who always has something which he wishes to conceal or something which he wishes to avoid. So he proceeds to set up a train of symptoms, which, to his mind, will most impress the observer. The hysteric is an actor, while the neurasthenic is a talker.

In war, both of these individuals would be classed as suffering from "shell shock." It is quite apparent to me, however, that we do not have to go to war to have the condition that has been designated "shell shock," because war statistics have shown that at least

85 per cent of the individuals who suffered from "shell shock" returned to the front; that the larger per cent of the remainder recovered on the way home after being S. C. D.; and that a very small per cent continued to have trouble until their compensation had been adjusted.

Right here I should like to say that for this class of people a pension is the worst form of settlement. They should be given a lump-sum settlement, so that their pension is not dependent on their condition and they no longer have to make good in order to have it continued. Then they will recover entirely.

Then we have the individual who has just a plain "yellow streak." He is the individual that you can call by almost any name and not exaggerate.

I should also like to call attention to the psychic effect of compensation acts. The very fact that the law compensates for certain conditions brings about a tendency in a great many individuals to lose sight of the real concept of the compensation act, and they insist that they be paid a lump sum of money for the accident, no matter whether or not they have any loss of capacity or earning power. While I am a firm believer in accident compensation and believe that all legitimate accidents should be compensated, a great many conditions arising under the compensation act would be ridiculous if it were not for the pathetic side, because the idea of trying to get the most possible for a trivial injury has a bad influence not only on the individual's nervous system but on his idea of right and wrong. It is a breeder of dishonesty, falsehood, deceit, and a soporific to the conscience.

However, social insurance legislation can only take into consideration the general welfare of its people at large and can not pretend to safeguard each individual case. Before a compensation act can be administered so that it will be just and absolutely impartial to the employer and workmen it will be necessary to have in the office of the insurance commission a record of the physical examination of every workman and to require that a general physical examination be made at stated intervals and a record of same filed with the commission. Then it will be possible to separate the conditions that the individual had before his injury from the results of accident itself.

The CHAIRMAN. Dr. Struthers has asked that instead of presenting a formal paper he be given an opportunity of discussing the other papers, so we will pass on to the next item on the program, entitled "Infections of the upper extremities." Upper extremity injuries and infections cost as much as all the other injuries combined, so I am glad we are to hear another paper on this subject read and dis-

cussed. I have much pleasure in asking Dr. P. A. Bendixen, of Iowa, to read his paper.

Dr. BENDIXEN. When Dr. Meeker asked me to prepare a paper on the infections of the upper extremities I experienced considerable hesitation, because I felt that my knowledge of this subject is limited compared with the statistics of the boards with which you are connected. Finally, however, I came to the conclusion that a paper on this subject by one from the outside might be of some value for the reason that the cases you deal with are cases that are in the last stages, or come up to you for final settlement. I want you to criticize my paper as much as you can, for it is by criticism that we learn.

## INFECTIONS OF THE UPPER EXTREMITIES.

BY P. A. BENDIXEN, S. B., M. D., F. A. C. S., DAVENPORT, IOWA.

In presenting this subject it is not the intention of the writer to burden you with statistics, or give you any set of definite rules for treatment, but his aim will be to give you a general survey as to the causes and treatment, and to appeal to you as physicians, and representatives of the industrial accident boards and commissions, to give a more detailed attention to the management of the infected upper extremity.

How many of us ever stop and consider the wonderful mechanism of the human arm, wrist, and hand with its powerful muscles, its slender tendons, the multitudes of delicate movements possible, its flexibility, its adaptability, and its acute sensibility. And yet how quickly, how easily, how rapidly, is this beautiful piece of human machinery ruined and put out of commission by the carelessness and recklessness of the individual himself and by the introduction of a few germs into its mechanism.

Realizing as we do the wonderful mechanism involved, it then becomes necessary for all of us to try to preserve this wonderful machine, which is so indispensable to all productive labor, to all economic welfare, to all progress in science, and to the enjoyment as well as to the maintenance of life itself. Yet with a full knowledge and appreciation of this wonderful machine we allow it to go to destruction on account of neglect either on the part of the individual himself, his employer, or by an unskilled and untrained surgeon.

Does the infected upper extremity get the painstaking, intelligent treatment that its economic value demands? I believe that it does not. There is probably no surgical condition that is of more importance that requires such careful and intelligent treatment, as that of infections of the upper extremity. To the workman the complete or incomplete loss of function or amputation of an arm, a hand, or a finger, often means the loss of his occupation, a change of occupation, or final pauperism.

*Etiology.*—The cause is an external trauma breaking the continuity of the skin, permitting the entrance of bacteria, and making a fertile media for the growth of the germ. There is no question but what the staphylococci and streptococci are the most common infec-

tive agents, yet other bacteria may gain entrance—namely, the gas bacillus, the tetanus, the anthrax, etc.

Besides the direct causes of these infections we must consider the outside influences which favor these infections. The individual himself may at first consider his injury trivial and give it no attention at all, or he may apply a contaminated handkerchief or a chew of tobacco which is thoroughly saturated with infected saliva.

The oils in which he works may be the infecting agents. A number of instances have been recorded in which the oil was highly contaminated by the common practice of the employees spitting in the oils.

The employer may be responsible for these infections by employing incompetent first aiders or an inexperienced surgeon. An inexperienced industrial surgeon came under the writer's observation during the recent war. A physician, who came from a small country town, was placed in charge of a civilian hospital which was taking care of about 10,000 to 12,000 men. As the injured men would come from the shops, dirty and greasy, he immediately became alarmed and gave the wound and the surrounding area a thorough cleansing with a solution of kerosene and benzine to remove the dirt. What did this physician do? A wound which was practically sterile and washed out by free bleeding was contaminated by the freeing of the infecting agents about the wound and drained directly into it. From this same institution, I am sorry to say, the percentage of infections was extremely high and in a number of instances I was compelled to amputate the extremity.

I am of the firm belief that the indiscriminate use of hydrogen peroxide, which is so commonly used among the laymen, is one of the frequent adjunct causes of infections. Why does hydrogen peroxide do harm? For this reason: That when it is introduced into a fresh wound gaseous oxygen is liberated, which in turn forces the bacteria under pressure into the healthy as well as into the traumatized tissues, and thus produces infections which otherwise would not have occurred.

As time will not permit me to go into a detailed description of infections of the upper extremity, I will briefly divide them into various groups.

First. The infections of the distal phalanges—namely, felons, paronychia, subepithelial abscesses.

Second. Collar-button abscess (shirt-stud abscess) (frog felon), or, as the French describe it, *en bouton de chemise*.

Third. Carbuncular infections on the hand, wrist, and arm.

Fourth. The grave infections of the hand and arm.

(a) Lymphangitis, which may be either superficial or deep.

(b) Tenosynovitis.

(c) Fascial-space infection. The pus in these fascial-space infections may be localized in the following five well-defined spaces:

- (1) Middle palmar space.
- (2) Thenar space.
- (3) Hypothenar space.
- (4) Dorsal subcutaneous space.
- (5) Subaponeurotic space.

Fifth. Infections of the arm may be divided into those involving—

- (a) The forearm.
- (b) The upper arm with the epitrochlear and axillary region.
- (c) Subclavicular and shoulder involvement.

*Symptoms.*—All of the types of acute septic infections produce pain in the affected part, with more or less swelling. The location of the greatest amount of swelling does not indicate the location of the pus; quite to the contrary. The excessive swelling comes in those areas where there is the largest amount of cellular tissue—i. e., upon the dorsum of the hand—while in 9 cases out of 10 the pus is on the flexor side.

The site of the greatest tenderness is of marked importance in the location of the pus.

In the subcutaneous type, which is the most frequent, we find the involved area markedly swollen, red, tender, and fluctuating when pus is present; lymphangitis and neighboring lymphadenitis are frequently present, especially in the streptococci infections and in those in which there is no free drainage.

In tendosynovitis there is severe deep tenderness over the sheath of the tendon involved and the patient does not move the affected extremity on account of the great amount of pain on the slightest movement of the tendon.

In osteomyelitis and septic arthritis of the joints there is a very hard and large swelling, much greater than in any of the other types of infection. The tenderness and swelling is deep seated; in other words, it does not involve the subcutaneous tissue alone, but involves the deep structures. When osteomyelitis begins there is a great deal of pain, which subsides in the course of four to seven days, but the swelling persists and pus continues to drain from the wound. An X-ray picture will show the necrotic bone.

The general systemic symptoms vary considerably, depending largely upon the location and virulence of the bacteria, giving no distinct aid in the diagnosis. Personally I have seen ulnar and radial bursæ involvement with practically no systemic symptoms.

*Diagnosis.*—The diagnosis in most of our infective cases can be made—

First. By the localized area of tenderness.

Second. The pain elicited by passive movements of the extremity.

Third. The location of pus by fluctuation.

Fourth. The history or presence of a wound, which is probably the initial source of the infection.

*Prognosis.*—The prognosis of these infected cases depends upon so many outside conditions, but it is the writer's firm belief that 90 per cent of the arms, hands, and fingers could be saved if care and judgment were used in the proper handling and management of these cases.

The writer has based his statistics on his own personal observation during the years 1917 and 1918. During this period 1,696 injuries to the upper extremity were treated, 825 involving the right side and 871 the left side. Out of this number 232 came to him infected—138 to the right side and 94 to the left side. From these figures you will note the large number of infected cases referred. In the history of every case of infection I found that the individual had either treated himself or had been treated by an overanxious or incompetent first aider. The infections that were referred had existed from three days to four weeks.

The average time lost by the employee was  $11\frac{1}{2}$  days, say nothing about his pain, suffering, and partial disability.

What does the employment of incompetent medical services and the individual self-neglect mean to the employer in the above statistics? The loss of 2,668 working days, say nothing as to what is meant to the employee financially or to his family.

The number of cases that became infected that were treated within the first 24 hours were four—three to the right side and one to the left. The average time lost was  $10\frac{1}{4}$  days, or the loss of 41 days.

In order to impress upon your minds the results of self-treatment and incompetent medical aid the writer will cite two well-illustrated cases:

*Case No. 1.*—J. B., a locomotive fire builder, came to my service on May 27, 1919, with a severe infected right index finger, involving the thenar space of the right hand. The patient claimed that five or six days prior to May 27 he was handling some wood to start a fire and while doing same he accidentally ran a splinter of wood into right index finger, palmar side distal end. He removed the splinter himself, continued work, and did not report the accident. The following day he claims he had pain in his finger, and that he had continuous pain for five or six days until it became so severe that he requested medical treatment.

The photograph will give you an idea as to the condition of the hand at the time of the first examination.

The patient was sent to the hospital, free incisions were made, drainage instituted, but in spite of all radical treatment gangrene

developed and it was necessary to remove the index finger six days after he reported for treatment.

There is no question in my mind but what his finger could have been saved had he reported the accident; the patient could have



CASE NO. 1. J. B.

avoided the suffering, and the employer could have had his services.

*Case No. 2.*—H. B., a football player, received a slight bruise to his right forearm, lower third. The arm pained him from the time of the accident and a physician was consulted immediately. On account of improper management by the attending physician at the

beginning of the case, the arm gradually became worse until an osteomyelitis of the radial bone developed. Free incisions were made, pus drained. You will note from the X-ray plate that the radius is almost twice its normal size, still showing some signs of the osteomyelitis with ankylosis of the carpal bones at the wrist; supination and pronation limited; fingers and hands are stiff. The patient has lost about 75 per cent function of his arm.

There is no question that the function of this arm could have been saved had proper surgical attention been rendered in the beginning of the case.

*Prophylactic treatment.*—Great care should be exercised in the first-aid treatment; scrubbing of the wound or surrounding areas should not only be avoided but condemned. The first-aid treatment should consist of the application of tincture of iodine in and about the wound. Where there is a considerable amount of dirt and grease in the wound it may be removed by a sharp curette or by trimming the edges with a scalpel or scissors. In punctured wounds, especially those produced by nails, the use of a sharp-pointed scissors will prove to be the most satisfactory. A complete debridement operation is done from the top of the wound to the dependent area. All foreign material must be removed.

The foremen in the shops should be instructed to insist that every injured employee, regardless as to how trivial the injury may be, report to the first-aid station at once.

The employer should call attention of the employee, either by posters, literature, lantern slides, moving pictures, or lectures, to the grave dangers and results following the neglect of minor injuries. Self-treatment should be condemned.

After an infection has once been established the affected extremity should be placed at rest by proper fixation splints, as it is a well-recognized fact that the lymphatic streams are aided materially in their return flow by muscular action. In severe cases rest in bed should be insisted upon.

The systematic use of drugs, such as nucleic acid, etc., to increase leukocytosis have never proved to be of a great benefit.

Passive hyperemia, as suggested by Bier, has not produced the desired results claimed for it. Suction cups may be used in cases of localized abscesses which do not drain freely.

Hot moist dressings, such as saturated boric acid solution, potassium permanganate, alcohol, bichloride, etc., have been very beneficial, and are indicated for reasons which will be mentioned later.

Prophylactic incisions and the common habit of pressing and squeezing the wounds should not only be practiced to a minimum, but condemned.



CASE NO. 2. H. B.

*Radical treatment.*—The attending surgeon must have a thorough knowledge of the anatomical structures involved, the location of the trouble, and referring to the well-applied saying of the late Dr. J. B. Murphy :

The blade of the knife is not sensed with vision, and to thrust a blind knife blindly into a human extremity is nothing if not criminal, and therefore every acute deep-seated infection of the extremity should be treated by exploratory dissection under anesthesia and anemia.

There is no question but what the permanent loss of function is due more to the surgeon's knife than it is to the infection itself.

The underlying principle is to make an incision at the proper place, large enough to allow proper drainage and the introduction of drains, preferably gutta-percha. A general anesthesia should be given, because complete relaxation is required to do skillful work. Complete anemia is obtained by the use of the constrictor. All operative procedure should be carried out carefully, methodically, and along certain lines.

After the drain has been inserted, hot moist dressings are applied. What happens when no drain is inserted and dry dressings applied?

The edges of the wound become edematous and exude serum, which coagulates and seals up the opening.

That is why hot moist dressings should be applied, as they prevent the coagulum. An important point to which I wish to call your attention is the flow of serum from the wound. Wright maintains that as long as serum is permitted to exude from an infected wound the condition is favorable. The serum bathes the wound and brings the lymph to the surface.

In the more severe cases of infections the Carrel-Dakin Dichloramine-T, or modifications thereof, may prove to be of great service in clearing up the infection.

In many cases that are referred to the surgeon the destruction has already advanced to a state where it is a question of trying to save as much of the limb as possible provided it can be made useful and functioning. When we meet with destruction of this kind the utmost care should be instituted. All necrotic tissues should be removed and should not be allowed to slough out. Proper massage and passive motion should be given in all cases where it is indicated. In the treatment of reconstructive disabilities, especially where the joints are involved, accurate and suitable records should be made as to the progress of the case. The chart used by the writer has been patterned after the free-hand drawing used at the Clinic for Functional Reeducation. The charts that are used at the Hart House, Toronto, can also be highly recommended if they are used in conjunction with Prof. E. A. Botts's series of mechanotherapy apparatus. In cases in which there has been a tendon destruction,

tendon transplantation may be resorted to. Various operative procedures have been recommended, and the method used will depend largely upon existing conditions present, the skill and experience of the operator.

General systemic treatment has its important place. This is mainly by early and thorough evacuation of the bowels, the forcing of large amounts of fluid, particularly water, the avoidance of alcohol, the eating of nourishing foods, and avoidance of any kind of fatigue. The whole point in treating these cases is not to omit any little detail which might help in any small way in these most vitally important cases.

*Conclusions.*—In conclusion the author wants to emphasize the following:

(1) The wonderful mechanism of the human arm and hand and what little consideration and thought is given to it.

(2) The importance of considering septic hand from an economic point of view, from the very start of the infection until the man has resumed work.

(3) The great importance of immobilization and rest treatment.

(4) The surgeon must have a thorough knowledge of the anatomical relationship of the extremity.

(5) The early establishment of passive motion and massage with accurate record showing improvement.

(6) That tendon involvement can in many instances be prevented by early and proper treatment.

(7) That early plastic operation and amputation are desirable after all other conservative methods have failed.

(8) Last, but not least, the old slogan, "No matter how slight the accident, report it."

The CHAIRMAN. It now affords me very great pleasure, indeed, to present to you my old friend, Dr. Raphael Lewy, chief medical examiner, New York Bureau of Workmen's Compensation, who will give you in his inimitable way his views upon cancer, with special reference to sarcoma in its relationship to trauma.

## CANCER, WITH SPECIAL REFERENCE TO SARCOMA IN ITS RELATIONSHIP TO TRAUMA.

BY RAPHAEL LEWY, M. D., CHIEF MEDICAL EXAMINER NEW YORK BUREAU OF WORK-  
MEN'S COMPENSATION.

It has been my privilege on former occasions to speak on the topics you have heard discussed to-day, and so when asked to write a paper on infections again I rather rebelled, but I think I made a bad bargain.

I have selected a new and (when presenting my views thereon to laymen) very difficult topic—namely, cancer in its relationship to trauma.

If you study the teachings on cancer by the old teachers, and if you refer to such scientific minds as Virchow and Cohnheim, you will be astounded and say to yourselves, "How could they conceive that?" Just in the way I have related—by retroanalysis. They have watched the local organization of tumors, which means their morphology and structure, and watched the anatomical relation of the parts in which these two occur. They have observed the age of the individual at the time of these tumors, and they have watched the development of these tumors in regard to time and consequences in the relations of the tissues in which they grew.

The great master minds, not satisfied with that, when surgery developed sufficiently to enable them to do so, extracted these tumors and made sections of them, and under the microscope found great sources for research. Some of the tumors appeared soft, some hard and shiny, and others pigmented and discolored. They studied these sections and found cells the meaning of which they endeavored to decipher.

They wanted to know the difference between a normal cell which does not cause the formation of tumors, and the abnormal cell which does, and they referred to the study of embryology.

I shall now lead you into my subject, and in view of the fact that it is a technical and scientific one I shall endeavor to define my terms when they may appear obscure, in order to afford you a logical conception of what I say.

It is difficult to speak on medicine and its subsidiary branches to lay people, and more so if the theme requires references or recapitulation of scientific research work. I will endeavor in my prelim-

inary remarks to give you a conception of the etiology, structural changes, and the clinical aspect of cancer, and will apply such knowledge to the daily routine work as it has in the relationship to the laws of workmen's compensation.

Although many scientists during a number of years by ardent conscientious research work, either in the laboratory, or by experimentation, or at the bedside, have endeavored to find the cause of cancer, I may state that a definite cause of cancer is as yet unknown.

The older teachers and scientists, especially Cohnheim and Virchow, have advanced the embryologic cellular theory, which consists in that during fetal development some cells, due to morphological or dynamic defects, remain dormant during life for many years, and may suddenly become activated either by some trauma or irritation from without, or some metabolic changes from within.

I have told you they studied embryologic tissue, and they found that certain cells differed in their development. They remained dormant. They did not abide by the elementary laws of life, and they found out that that was due to a defect in the structure of the cell. It is yet a question which part of the cell is defective. On the foregoing hypothesis they created a theory which stands to-day, and is accepted by many. The theory to which I have referred is that these cells remain dormant as the animal or human being grows up, and after having remained dormant for many years, due to some cause or irritation or trauma, they begin to develop. Now, if cells remain dormant for 30 years or so and want to make up, to the body which has grown for that period something terrible must occur, and so it does.

Another hypothesis advanced is that of heredity, which is also accepted by some.

A more recent hypothesis is that of bacterial origin. As to this last hypothesis, I must dissociate my views and state the following reasons:

Whether the early manifestations of cancer are primarily local, and later constitutional, or whether it shows an early primary cachexia, it does not act locally or constitutionally like an infection.

The rise in temperature and pulse rate and local manifestations of inflammatory changes or those of infection in a cancer are, in my opinion, always a secondary condition.

Very seldom will you find a temperature and rise in pulse rate in patients when they first consult you for diagnosis of cancer.

The history is always the same. No temperature; no inflammation. When that tumor ulcerates and shows the evidence of ulceration it is a secondary infection, not a primary one.

Another important factor which I advance against the hypothesis of bacterial infection is this: All other infections, as, for instance,

tuberculosis, syphilis, anthrax, tetanus, actinomyeosis, etc., which are amenable to surgical treatment, have at certain times incidentally caused infections among surgeons who came in contact with them. In 25 years of active work I have known of several cases of septic and syphilitic infection among surgeons, but I have not heard of any authentic case where a surgeon has inoculated himself with cancer; and I believe it is impossible for any person to inoculate himself with cancer from without, as with the infections which I have enumerated.

If my memory serves me, Adami refers to some experimentations of Ehrlich, who has inoculated a large number of mice with teratoma-sarcoma—a cartilage tumor. Most of these inoculations have taken, but when using malignant tumors only a few have taken, and some of them have been entirely absorbed, and I am absolutely sure if you were to take a cancer and embed it into the muscular tissue of somebody who is not a recipient of cancer (I shall speak of diathesis later on) it will be absorbed and not develop a cancer.

*Definition of tumors.*—Cancers are tumors, but tumors are not always cancers. What, then, is the definition of a tumor?

A tumor is an hyperlasia of tissue due to proliferation of cells caused by any degree of irritation, either in consequence of trauma, inflammation, or infection.

That means simply this: A tumor is an enlargement of any part in the human body, due to the growth of the cells. Such a condition of cells can be caused either by irritation from without or within, and with or without infection.

The behavior of tumors, during their growth, the rapidity with which they grow, the invasion of the surrounding tissue, the microscopic structural changes, the secondary changes in the tumor, constitute the classification between benign or innocent tumors and malignant tumors or cancer.

The older teachers observed that some of the tumors remained for many years perfectly innocent and did not cause any constitutional disturbances, but simply grew. These tumors were extirpated and they did not recur. They did not grow very rapidly, and the individual did not constitutionally suffer, and so they gave them the term "innocent" or "benign" tumors.

The benign or innocent tumors generally consist in their morphological structure of the same tissue in which they grow. They do not grow rapidly, do not invade surrounding tissue, do not cause a general cachexia, and when removed do not recur or cause secondary metastasis. They found that the structure of these tumors was of the same consistency as the part of the body in which they grew. I may mention the lipoma or "fat" tumor, an innocent thing which, if taken out radically, should never recur. The malignant tumor or

cancer, on the other hand, invades the adjacent tissue by peripheral or eccentric growth, and has a tendency to recur after removal, and causes metastasis either through the lymphatics or circulatory system, depending on the type of tumor, i. e., the carcinoma through the lymphatic system and the sarcoma most often through the circulatory system. They cause a severe drain on the general constitution of the individual which is easily detected, and is called cachexia.

The older teachers were also of the opinion that malignant growths most often occur after 40 years of age. We may state from observation that a malignant tumor may occur in any age, and very often is seen before the age of 25—i. e., carcinoma of the breast and epithelioma at the mucocutaneous junction, at the eyelids, nose, mouth, and anus.

A tumor in a woman's breast may occur very early in life. I recall that some of the greatest surgeons stated that any tumor, however small it might be, in a woman's breast, is an indication for an immediate excision of that breast. This is not a unanimous opinion of all surgeons.

There is a class of tumors which occur in early childhood—namely, the teratoma, which are congenital embryonic growths, which very often affect the kidney.

In contradistinction to the teaching by the old teachers that there was a cancer age at about 40, we find that, unfortunately, very young children develop cancer, especially the kidney type—a very fatal disease from its incipiency. I have seen during a large clinical observation a few malignant tumors in early childhood which involved the kidney, the parotid gland, and femur.

With these preliminary general remarks I shall lead you to my subject—namely, sarcoma. I shall first refer to the general literature of the subject and to some of the statistics by other authors.

At the French Congress and International Congress, in 1907 and 1910, one of the most important discussions was the relationship of cancer to trauma. Colli in studying the etiology in 970 cases gives a history of trauma in 225, or 23 per cent. In 117 of the 225 traumatic cases the tumor developed within the first month after the injury. In the 225 cases 105 originated in the bone; in the other 120 cases the origin was in the soft tissue.

For the lay members of my audience let me mention a certain incident: About a year ago my commission sent for me and said, "Dr. Lewy, how soon can a cancer of a bone be developed after an injury?" For the moment I was utterly perplexed, and then I referred to similar pathological conditions and decided as follows: If a person has inflammation with infection and that infection causes a hyperlasia of tissue to cause a tumor of any size, I say it would

take months. When I was asked how many months, I replied: "Well, at least six months." To my astonishment, on referring to the literature of Colli, I found he has authentic cases of sarcoma eight days after the injury.

In 250 cases of carcinoma there were 120 cases of carcinoma of the breast, with a history of one single trauma preceding the formation of the tumor. Most of the teachers are of the opinion that one single injury will not cause a cancer.

Clarence A. McWilliams, of the Presbyterian Hospital, in 100 cases of carcinoma of the breast, finds 44 per cent due to distinct trauma. Von Bergman was of the opinion that a single trauma to the muscles or glands can be the predisposing cause for all types of cancer.

Paul Segand, of Paris, has given the subject great attention, and considered trauma as a cause of cancer, provided it can be proven that the individual was a perfectly healthy specimen antedating the injury. Segand was evidently already a medical adviser to the French commission. As he was compelled to use an original way for himself he referred to ordinary logic and said:

If I am to answer whether this man developed carcinoma or sarcoma in consequence of injury I must know his condition before the injury. There is nothing wonderful about that.

I shall now refer to my own cases:

In 26,389 examinations we found 37 malignant tumors attributable to trauma as follows:

1. Sarcoma of the knee (3).
2. Osteo-chondroma of the finger (3).
3. Epithelioma of the finger (1). Exceptionally rare. Sarcoma at head of tibia.
4. Sarcoma of testicle (10). (One additional followed by general sarcomatosis.)

5. Lympho-sarcoma of the neck (2). One considered by other physicians as aneurism of the subclavian artery—a most interesting case. An Italian came in to see me. As he walked in I noticed a slight diffused enlargement. I felt it and said to one of my men: "Put down a lympho-sarcoma," and he made an entry to that effect on a card. We saw the tumor grow, and within five weeks' time the same unfortunate man said to me: "Doctor, when I was injured on the shoulder I was injured on my neck." He had made a connection in the case, and all in all I did not blame him. It was the weapon of the poor man. I followed the case for six months, and was called up by a leading physician in a hospital, who said, "I have a subclavian aneurism. Would you like to see it?" I went, and saw the Italian and recognized my case. I said to the doctor, "Did you get a history in this case?" and he said, "Yes, he hurt himself."

I said, "That is what he tried to tell me, but how did he get the aneurism?" What happened was this: The tumor disintegrated. Sarcomas very often fill up with blood.

6. Carcinoma of the stomach (1) (epithelioma penis) after a burn from falling astride on a hot pipe.

7. Sarcoma of the femur (2).

8. Sarcoma of the clavicle (2).

9. Sarcoma of the zygoma (1).

10. Retro-peritoneal (2). Tumor of scrotal tissue. No involvement of testicle.

In referring to the analysis of cases of the different authors, and my own cases, we must accept that trauma is evidently either a primary cause or an activated factor in the development of malignant tumors.

I want to make that clear. If injury in itself was a pure cause of cancer, then everybody who got bumped or fell or received a kick should develop cancer. That is not so. But I believe that the human race is divided as to specific predilection for, or affinity to, special disease, and that where that so-called weak spot exists (to which the old teachers at all times referred) the injury becomes the activating factor in calling it into play. In studying the embryologic tissue during various stages of their development we have advanced the hypothesis that all the tissues of the body develop from three distinct layers, namely, (1) the ectoderm, (2) the mesoderm, and (3) the endoderm. They found that from each one of these membranes there develops special tissues of the body, which, if morphologically defective in the early development, predispose to special type of growths.

I have neither time, nor is this the place, to refer to minute embryological study of tissue; but in its relationship to the subject of sarcoma it will suffice to say that as the sarcoma is a connected tissue tumor of the embryonic type, it affects most often the tissues which correspond to such structure. Therefore, we find sarcoma most frequently in the periosteum, in the bone marrow, in the skin, and subcutaneous tissue and choroid. They also occur, but more rarely, in the duramater, in the brain, in the cord in the outer sheet of the blood vessels, nerves, and sometimes as metastatic tumors in the liver, lung, and heart.

The cellular elements of sarcoma may either be fusiformed or spindle shaped, spheroidal, or very small and spheroidal when they resemble leucocytes, and are therefore often mistaken for inflammatory changes. In some tumors the fibrous tissue may predominate to such an extent that the tumor is considered a fibroma. The rapid growth, its occurrence early in life, its great vascularity, its

tendency to recurrence and metastasis stamp it as a malignant growth.

I know of one case where there was a controversy about specimens taken from the same sample tissue and given to two pathologists, and one man called it sarcoma, while the other called it granulation tissue.

As they are intimately related to the blood vessels, metastasis is through the blood vessels, and not as often through the lymphatics as in carcinoma. Sarcoma are divided as to their structural changes and as to shape and size of their cells into large and small spindle-shaped and large and small round-cell sarcoma. When you get cancer of the breast you get enlargement of the glands in the axilla. When you have a sarcoma the invasion of the glands is a secondary condition, but if sarcoma of a bone is followed by a sarcoma of the liver it is not through the lymphatics, but through the circulatory system, through the blood vessels.

There is one type of sarcoma, the most malignant of all—namely, the melano sarcoma, most frequently found in choroid and skin and forms metastatic tumors. These tumors contain in their cell a black or brown pigment, which must not be mistaken for the broken-down hemoglobin of the blood.

The question now arises how to apply this theoretical and clinical knowledge to our daily work in considering the relationship of trauma as a primary cause or a contributing factor in the development of sarcoma.

I will refer to this after the citation of special cases which I have selected from our large material:

1. Osteo-sarcoma of the knee joint. (Charcot.)
2. Osteo-sarcoma of the index finger to this injury.
3. Osteo-sarcoma of the knee, resembling tuberculosis.
4. Sarcoma of testicle; no direct blow but only muscular exertion.
5. Sarcoma of testicle, with general retro-peritoneal sarcoma-tosis.
6. Epithelioma of the penis (falling on a hot pipe astride).

*Conclusions.*—Sarcoma is a malignant tumor which may occur early in life. It occurs and develops without trauma, or trauma may be the primary cause in its development, or may be the activating factor in its very rapid growth. The trauma need not be severe and need not show external manifestations, and the individual need not be disabled immediately. The trauma need not be due to direct force; it can be due to muscular exertion.

The duration of time from the date of trauma and the first manifestations of sarcoma may be a week up to two years, to be attributed to the injury as cause or factor. Sarcoma of the joints, especially of the knee, have in their early stages been faultily diagnosed as rheumatic conditions.

## DISCUSSION.

The CHAIRMAN. According to the program it is my privilege to open the discussion on the various papers we have heard, and as I am limited to 20 minutes I shall follow the Biblical precedent and take the last paper first, and shall refer to the subject of cancer as "new growth."

I disagree with many of Dr. Lewy's conclusions about the application of interpretation from the compensation standpoint of new growths. Perhaps I will have to be a little dogmatic on account of the limited time at my disposal. In the first place, carcinoma (and that is cancer, so called) never, in my opinion, came from a single blow. If it came from a single blow we would be studded with them after the age of 40. Take, for example, the question of traumatism in relation to the gentler sex. Every woman when she thinks she has a cancer of the breast can tell you of some time when her breast was struck; but the remarkable thing about traumatism in relation to the breasts of the female is that the lower half of the breasts are traumatized daily by the top of the corsets, and 75 per cent of the cancers that ever grew on women's breasts grew in the upper portion not traumatized by corsets.

Cancer of the face would be frequent if traumatism was the cause, and I may call attention to the fact that in the 26,389 cases examined by Dr. Lewy, in which he found 37 malignant tumors attributable to trauma, he found only two cases of sarcoma of the zygoma or cheek bone, which is often walloped. If trauma was the material factor we certainly would be able to produce more than two cases in 26,000 examinations.

With regard to cancer of the stomach as the result of traumatic injury, it may be noted that the portions of the stomach which are exposed to external violence produce only 5 per cent of the cancers of the stomach, while the parts of the stomach which are not exposed to external violence—namely, the pylorus of lower end—produces 50 to 60 per cent of the cancers; and that part of the stomach which is hung along the backbone produces about 15 per cent; and the lower end of the esophagus produces all the rest except 5 per cent.

Now, in cancer of the stomach you do have trauma, but it is the internal traumatism represented by the contractions of the stomach in grinding up the food, and then by the contractions of the pylorus squirting that food from the stomach through the small intestine, and where you have the continuous irritation cancer of the stomach develops. It is not related to external violence.

I will take exception to another statement made by Dr. Lewy to the effect that you can get carcinoma of the stomach by indirect violence.

Dr. LEWY. Pardon me; I said "sarcoma."

The CHAIRMAN. The result would be the same. There is a case in Volume II of the proceedings of the Massachusetts board where it was found on the testimony of the best authorities in Boston that a blow on the back of the neck could not aggravate the carcinoma in the cardiac end of the stomach—a part far removed from violence.

Now, I will take up the subject of sarcoma, since Dr. Lewy confines his remarks so much to sarcoma. I have followed the rule of the Ober German Medical Commission and the rules largely formulated by the Cancer Institute at Heidelberg and by the late Prof. Czerney, who was a pupil of Billroth.

It has been found—and it is the rule of every medical practitioner, and of our board, as far as it is possible to have a general rule—to take into account the point at which the violence was applied, and that there was an actual proven injury.

Secondly, there must be a proven trauma of sufficient intensity to injure the parts. It can not be so indefinite or indistinct as not to cause the immediate symptoms, or you have not produced the place that sarcoma can grow. Sarcoma must grow at the place at which the injury was received, and there must be a connection between the time of the injury and the time of the appearance of the growth that is unmistakable.

The sarcoma must not appear too early in the lifetime of sarcoma; and if a sarcoma is found within eight days or two weeks or one month or six weeks, you can be almost absolutely sure that you had a sarcoma there to start with because it is too early for that sarcoma to get a start and grow to any size that can be diagnosed.

It must not occur too late. If a sarcoma comes two years after an injury, that is too long in the life history of sarcoma to be related to the particular injury, and other factors must have come in.

I am not going to take up too much time on that, because I want to leave opportunity for general discussion. I see a lot of men preparing ammunition, and I hope they will use it.

Dr. LEWY. You will get it.

The CHAIRMAN. Of course, the lowered resistance and the cause I will not enter into, because if the 45 minutes allowed to Dr. Lewy was insufficient my 15 minutes is also inadequate.

I am going to speak in a general way of my understanding of sarcoma, and taking into account Dr. Lewy's own statistics of 37 cases in 26,000, I say we should be extremely guarded in stating that sarcoma comes from a single traumatism unless the connecting links are unmistakably proven.

Referring to the other papers: The question that came up with reference to septic cases and X-ray diagnosis is worthy of attention. X-ray diagnosis is not a substitute for a clinical examination,

and the efforts of boards and the desire of boards to accept the evidence of an X-ray picture as against clinical evidence by a competent medical examiner is the height of absurdity. An X-ray picture can be made to prove or disprove anything, and unless it is carefully worked out it may not show what you are seeking for.

You may take an X-ray picture of the hand, palm up, and find no fracture in the bones in the back of the hand which are so important, and which, if not recognized, produce tremendous disabilities. Repeatedly I have had X-ray pictures given to me with the palm up and have sent them back and had an X ray taken of the same hand palm down, and obtained evidence of spiral fracture.

Dr. Mowell spoke of the heel cases. A year ago I entered into the difficulty of finding out a lot that is not yet known about the heel. The os calcis, or heel bone, is a very irregular long bone, with various little shelves on it, and various articular surfaces where it connects with other bones, and in taking an X-ray picture you project all these other surfaces onto one plane. You can not do that successfully all the time. If an X-ray shows a fracture, that is all right; but if it does show a fracture it is not conclusive proof that there is not a fracture there.

In a certain case I was convinced there was a shortening of the heel bone; that one was shorter than the other by three-quarters of an inch, and that it was either congenital or a fracture. I X-rayed it side on and found no fracture. I X-rayed it the other side down and still no fracture was found. Then we put the woman over the table and X-rayed directly through the back of the heel, and there was the fracture; there was her sore heel and there was the proof that she told the truth and was entitled to compensation.

Now, my 20 minutes have expired, and so I will pause for a while. Perhaps I may ask for a little time later on.

I will now ask Dr. W. E. Struthers, chief medical officer, Workmen's Compensation Board of Ontario, who preferred not to read a paper, to take part in the discussion. Dr. Struthers has had service overseas, and so I am sure he will be able to tell us something that will be of great interest to us.

Dr. STRUTHERS. I understood my observations were to be confined to Dr. Mowell's paper on "Disabilities as aggravated by preexisting conditions." Incidentally I will touch upon the remarks made by Dr. Donoghue.

I will commence by taking up the large series of congenital defects enumerated. I am afraid that if we were to go over this long list seriously we might experience some fear in undertaking compensation work. Our experience in Ontario has not, however, proved that congenital defects are a very serious factor in claims. I have myself come across very few cases claiming compensation where it

was suspected to be due to congenital defects. There are some that are to be found much more readily and frequently than others, of course.

I wish to confine myself in this paper largely to two principal things, one of them involving a number of others.

Take, first, the question of flat feet. This is quite a problem in compensation work, and it was also quite a problem in the army work. Men who wanted to enlist made light of their flat feet, but in the early days of enlistment for military service in this Province many men were rejected because they had flat feet. Later many of these men were accepted, and still later I believe the authorities were very glad to get all of them.

I came across a number of these men who had been permitted to enlist in the battalion to which I was attached as medical officer. Some of the men, after having enlisted, found their ardor somewhat subsided, and thought that flat feet provided a good excuse on which to secure their discharge. In every case I happened to investigate myself I was satisfied that the claim of pain was not well founded, and after talking to them for quite a while would get them to own that they had had flat feet for, perhaps, 5, 10, 15, or 20 years. I always reported against the discharge of these men.

I had the unique experience, however, of coming across a man who enlisted in our battalion who had walked 160 miles from the far north to reach a railroad by which he finally got down to Toronto. His enthusiasm had also somewhat subsided, and subsequently he came up before me for discharge. I objected very strenuously to his discharge, and the matter came before the medical board. Notwithstanding the fact that he acknowledged what he had accomplished (I might mention in passing that he was an Indian, and I believe that condition of flat feet might be almost called normal among Indians, or at least all I have examined) they discharged him.

Very often the injury is only to one foot, and very frequently there is a difference between that foot and the other.

On the other hand, I frequently find cases where a flat foot was claimed to be the result of injury, and the other foot was just as flat or even in a worse condition. In the case of rather loose-jointed individuals I think flat feet are a practically normal condition. If that condition has not existed during their childhood it has come during their adolescence, and that is no defect. I do not believe they suffer pain at all. This, of course, is in compensation work a highly contentious subject—whether such an individual should receive compensation. Granted that he has received an injury to one foot, and you discover that the other foot is just as flat as the injured one, what should be done? I have always thought that claims for

permanent partial disability in these cases should be discounted, and have recommended accordingly.

I now want to speak specially about what Dr. Mowell said in reference to the presence of an unstable nervous system. When you enter that field you find it is without boundaries. We have a good knowledge, and a knowledge that can be demonstrated, of the result of a cut motor nerve—a nerve that supplies a muscle, and through which such muscle acts. We can demonstrate that quite easily. No malingerer can get away by saying that he can not move his muscle because the nerve has been destroyed or cut. Any man ought to be able to demonstrate that what he says is true or not true. Of course we have had the experience of malingerers trying to put that statement over on us, but I do not think we have ever had a case where a man has gotten away with it.

Then, too, we can demonstrate the results of pressure on a motor nerve. If that involves a considerable area it is not at all difficult to demonstrate the fact that there has been an injury to a nerve.

There is a class of cases, however, where it is not easy to demonstrate that there is an actual disability where there is, to my mind, an actual disability. If we refer to the muscular system, overwork of the muscles generally presents itself to our ocular view. We can show that that individual has overworked his muscular system, because there are effects to show it, evidence of malnutrition, overtired muscles, etc. These are fairly easily demonstrated. We can demonstrate also through the muscular system the effect of direct injury to nerves, but are we in a position to demonstrate where there is malnutrition of the nervous system any decreased strength in nerve power? How are we going to demonstrate that? This is the fertile field for the malingerer, and we have several names that have crept into our medical literature, such as hysteric, neurasthenic, neurotic, and so on.

What is meant by “unstable”? We know what it means in our minds. What does it mean in the nervous system? I am not sure that I know. I am not sure that the point of view of the medical profession in the past has been entirely correct toward the claimant in these cases. I am fairly sure that the attitude of the lay individual is often either too much in favor of the claimant or too little. When a person has had a great deal of nervous strain what happens to his nervous system? I am not prepared entirely to say, but from my experience I believe there are individuals who get a result, whatever you may call it, that amounts to an actual disability to them. I think the word “neurasthenic” is often misapplied. If we take the proper meaning of the word from its derivation we should be able to get at some conclusion as to whether it is really true or not: “A wanting of nerve strength.” You are, in my opinion, confronted

with a most difficult problem in demonstrating whether an individual has normal nerve strength or not, and each case will have to be studied on its own merits. I do not want you to think I am losing sight of the fact that we may always have the malingerer with us, but I am afraid there are many times when the actual disability is present and we are apt to regard the claimant as a malingerer or a neurotic or a neurasthenic. I think we should go slow and give greater consideration and study to these cases than we do. Too often we give snap judgments. In some of these cases I have asked that claimants be put in a hospital for observation, but I do not think an individual shows himself in natural unrestraint under hospital observation. If you could get trained observation in his own home, where he is more likely to be natural, I think we could reach the actual truth.

Dr. Mowell says the neurasthenic is a talker and the hysteric is an actor. Now, that is very epigrammatic, and supposing we admit it is true, is it the whole truth? I do not think so. A neurasthenic may be a talker, but with my conception of the word "neurasthenic" he has a disability. He may be a talker, but many times I think he is not a talker. The fellow who is apt to say a great deal about his disability is much more likely to prove a malingerer than is the neurasthenic.

Referring to the question of old age in connection with the nervous system, Dr. Mowell made another statement, but I am not sure he means what it conveys to me. That is to say, that in the event of an accident to an elderly person, if you consider the severity of the injury should not incapacitate a normal individual, and if you eliminate the question of old age, there would be no compensation. To my mind, you can not eliminate the question of age. You must take the tissues of that man as they are when the injury occurs, and undoubtedly the tissues of the aged person are not in a condition to resist trauma in the way a younger person does. I, therefore, think that in all cases of trauma in elderly persons the time allowance for disability must be greatly increased, and there again the period of disability must be judged on each individual case.

How are we to estimate the extent of disability to a person of old age? I think compensation should be continued until such times as they show that no further improvement is going to take place.

That introduces the other problem of considering the permanent partial disability, and then you must take into consideration the age of the patient and the disability that is present on account of that age.

Perhaps the case that causes the greatest concern is that of the individual who, through shock, through injury, through nervous strain perhaps due to worry (it might be due to matters that have

nothing to do with his work, but yet are producing results on his nervous system), has his disability much prolonged. The results are varied. Some people think when you speak of being nervous that you mean a person who is easily frightened, easily disconcerted. I think it should convey the meaning that their nervous system is easily put on strain, and then they are enduring a greater loss of power than under normal conditions, that loss of power being to the nervous system especially. I think in these cases we should consider how much the individual's situation and surroundings, as well as his own condition, have a bearing on his nervous system. I say that is not an easy problem. On the contrary, I think it is a very difficult problem to estimate the amount of disability that such an individual is suffering from. You may not get good recovery within six months or a year or two years, but if a person is young or in middle age there is bound to be recovery under proper care, supervision, and encouragement.

The CHAIRMAN. The manufacturers' and employers' side has not been presented in many of these discussions, and so it will, I am sure, afford us a great deal of pleasure and interest to hear from Dr. F. E. Schubmehl, of Lynn. Dr. Schubmehl is conducting one of the best systems for treating injured workmen, and he will be able to tell us something about the location of a plant hospital, and such other matters as may occur to him.

Dr. SCHUBMEHL. To tell what my experience has been in the last five months would require a vocabulary not yet printed. For seven years I have been dealing with the injured in industry. Dr. Donoghue expressed a desire that I tell you something about the location of the dispensary, hospital, and so on. One thing must appeal to you all, and that is that the accessibility of the medical department to the departments from which most injuries are liable to come should be the first consideration in designing such location. We have a great many injuries to deal with, some small and some more serious. The small and more simple ones sometimes give us the most trouble, because of the tendency of the employee to disregard what he regards as a trifling injury when it may, in reality be exceedingly serious. We have commenced to believe that there are no "clean wounds." When you talk about a wound that freely bleeds as being properly cleaned out you are talking about something we have commenced to believe does not exist. We have to treat all injuries to the skin, and some underneath the skin, as infected wounds, and by recognizing that fact we are getting very good results. The doctor's statement in regard to the application of iodine is well taken. We use that in our first aid department. We have 200 first-aid jars distributed throughout the factories in order to facilitate the immediate treatment of the slightest injuries, and these jars have considerably reduced the results of infection.

The element of resistance in the individual determines the extent to which a septic condition will appear. It is the number of bacteria that are left in the wound plus the individual's lack of resistance to cope with them that causes the trouble. We know that the injury itself was the primary cause of the disability that finally comes with that infection. We also know that if the man had come to us early and allowed us an opportunity to help him build up his resistance during the time we were treating his injury we could lessen his disability. But we could not put that into the minds of all at once. They are, however, beginning to realize that it pays to go to the first-aid man as soon as possible. But you can not get men to run to the first-aid man unless the first-aid man is right there where the injury takes place; and so, as I have stated, we have about 200 jars distributed right there and the first-aid men are cautioned on what not to do. If they will do the few things they are cautioned to do, excellent results will be achieved. We have a great many patients that have to be operated upon because of neglect. These are taken to a general hospital.

With regard to clipping away with the scissors a new injury that comes into the dispensary, that sounds fine from the surgeon's point of view, and I think it is pretty good surgery, but in the case of one-third of our employees we could not do that. If they came to us with a slight injury and we attempted to go near them with an instrument, why the free choice of a physician would put us out of business. We have to treat the other part of the injury, that part the man brings in in his head, and we have to modify our treatment sometimes to get the best results and the cooperation of the men.

With regard to flat feet—in industry we have a great, great many people that have flat feet. We also have a great, great, great many that never give us any trouble at all from that defect. They go through life with the most horrible looking flat feet you ever saw and no trouble. Once in a while we get one with a flat foot on one side and with a normal looking foot on the other. He gets a slight injury to the good foot and he says he has pain. The foot looks better than the other flat foot that is giving no pain. Yet who of us shall say that man is not in pain? The man is not yet born that can definitely say so. I had a man that I believed was trying to put something over on me. I had him come to my office the last thing before he went home at night to talk with him, and the moment he left I got into my automobile and drove by a circuitous route to the point where he would leave the street car to go to his home. I watched him go home for several nights, and I realized that I had done that man an injustice. I am very careful now when I tell a man he has no pain when he says he has. We have malingerers, and

they get away with a lot of stuff on us, too, but we don't always get it put over; and when we find a man out, we forget we are human and treat him the way he is treating us, which brings results. On the whole, we are doing fairly good work, I believe.

I want to say another word. I hope I can retrovert a little bit. You have been talking about some things since I have been here that I believe are in your own hands for administration. The country at large and the manufacturers are placing in your hands the administration of this legislation that the country has gotten for the working people. You have been talking about lump-sum and direct settlements and so forth. There are privileges you should not be deprived of. You should be clothed with much more liberal opportunities than you have at present. We have to trust to somebody. You men are appointed to these positions because you are and can be trusted. Therefore the lump-sum settlement and the direct settlement should be at the discretion of you men. You are the ones to do it, and you should not be curtailed at all but should have all those liberties.

The CHAIRMAN. I will now ask Dr. Mowell to say a few words.

Dr. MOWELL. It seems to me I must have been misunderstood as to what I meant with regard to flat feet. I have had the same experience that this gentleman has. They are not always malingerers. I said that I had seen men put to bed that had no injury to the feet. After being in bed for a few months suffering from broken legs or some other condition, when the patient was allowed to get up and be on his feet he would begin to complain of pain in the feet. He had flat feet before the injury. In my opinion, this is due to the fact of being in bed and nonuse of the muscle, so that the muscular tone allows his arches to spring down more than they did before, this giving rise to his pain. I think I have the same conception of pain as the surgeon who spoke on this subject.

With regard to old men, we have to pay them time loss three or four times as long as we do our young men, so it is a question when to quit paying the old men time loss, and sometimes it is a difficult question to know whether he is entitled to a pension in the end. It is a fine point to come to a decision in cases of this kind, because it is quite evident that if he were a young man you would certainly not pension him for the condition as the result of the accident he received.

Dr. BENDIXEN. I am very glad that Dr. Schubmehl discussed some of the points that were brought forth in the paper. He mentioned the subject of free bleeding. On this point I do not want to be misunderstood. I was only making a comparison and claimed that a wound in which there had been a considerable amount of free bleeding was less liable to be contaminated than one that had been

scrubbed with kerosene and benzine. In other words you are washing the germs into the wound.

The old method of scrubbing in and about the wound should, I believe, be condemned. I personally think that it is a bad practice for any surgeon to proceed along these lines. First, we have devitalized tissue as the result of the injury, and by additional scrubbing we do further injury to the cellular structures.

Small cuts and abrasions which are contaminated with grease and dirt should be thoroughly cleaned by the use of a currette or scissors, and I have never experienced any trouble with a patient refusing proper treatment. My practice has been to give the patient the least amount of pain possible, and I use either local anesthesia or nitrous oxide in cases in which it is indicated. I might state that most of our injuries are sent immediately from the plants, and we have little trouble in removing the dirt and grease in these wounds.

In reference to the men not being sent to the first-aid station I believe that most of the trouble can be attributed to the foremen in the shop and the superior officers, as most of the foremen have a tendency to push their men to the full capacity. On the other hand, men who are working on piecework at times are somewhat slow in coming to the first-aid station for the reason that they do not care to have any delay in their work, which means a financial loss to them. Nevertheless we require all the foremen to send every injured individual to the first-aid station for treatment, regardless of how trifling the injury may appear.

The CHAIRMAN. Dr. Lewy, I shall be very glad if you will not only take your own time but mine for reply.

Dr. LEWY. I thank you. I believe this subject of infection is most important, and I concur to a great extent in the experience of the doctor who has written this paper, and I wish to emphasize two points in connection with infections: The smaller the wound the more serious the infection. The punctured wound is the most serious wound as to infection and consequences. It also depends on the anatomical topography. All wounds of the flexuous surface of distal phalanges, with the exception of the thumb and little finger, can usually be treated without great inconvenience. Those of the thumb and little finger have the only two tendons which have a bursa attached to the angular ligament, which is covered by a synovial sac extending from the middle of the forearm down to the metacarpal bones. These infections are the most serious infections. I have been brought up in a very large clinic which treated infections. That means that most of our work came from people who worked with pointed instruments—needleworkers, etc.—and I can conscientiously say that in the last 18 years during a largely daily clinical service I had no need to amputate a finger following infec-

tion. Every one of my cases got along without amputation; but every case of distal phalanges infection resulted in a loss of part of the phalanx, due to the infection. I believe a too early incision in a place where there is no localized pus focus is harmful.

As to the infection on the back of the hand causing lymphangitis, they are very serious. The infection of the thumb or little finger, when it involves either the tendons of the thumb or the little finger, always results in deformity, although the case is treated by very competent surgeons. I learned this, that while the patient has very severe pain I would rather wait until a local pus focus forms before I operate, and in this way I prevent serious deformities.

As to Dr. Mowell's paper, I shall limit my remarks to flat feet. I believe a bilateral flat foot is almost always a congenital defect. I do not mean that the individual came into the world with entirely deformed feet, but there was a laxity of the ligaments and it eventually developed into a full-fledged flat foot.

A traumatic flat foot is most often in consequence of either a Pott's fracture or a fracture of the os calcis or astragalus. The aggravation of flat feet, unfortunately, occurs and results in a painful, prolonged disability. Relaxation of the ligament or a partial dislocation of the os calcis most likely exists.

A few words about old age. What occurs to the old man? He comes in and says: "Well, I am 70 years of age, doctor. I work. I have been a driver. I was shoveling and fell, and when I fell I got up and began to puff." He gave you a very distinct clinical history. There is no question about that. He was driving a pair of horses and during his work he fell, and now when he walks 10 steps he begins to puff, and he did not do it before. That is not senile change, but the aggravation of physiological senile changes, and this man deserves compensation. You have to take his disability as it is.

Then there is the question of neurasthenia. If ever a term was included in the nomenclature of the medical terms which is very indefinite, it is the term "neurasthenia." There is nothing wonderful in making a diagnosis if you have evidence of an organic pathological lesion, but it is very difficult to diagnose the various neuroses on subjective symptoms only.

## **WEDNESDAY, SEPTEMBER 24—EVENING SESSION.**

**CHAIRMAN, F. H. THOMPSON, M. D., MEDICAL DIRECTOR OREGON STATE INDUSTRIAL ACCIDENT COMMISSION.**

### **MEDICAL SESSION (Continued).**

The CHAIRMAN. I have been requested to ask those present to get into a compact group in front of this table.

Before calling for the first paper on this evening's program I want to refer for a moment to the paper read by Dr. Mowell.

In Oregon the commission treat the man as they find him. If he has a congenital defect of vision, and they have no record of that, the man is paid according to the vision shown at test, and the case is final.

If the uninjured eye shows only two-thirds of normal vision the man is paid on the basis of the amount of vision lacking in the other eye, because two eyes are not necessarily alike, and they accept it as 100 per cent prior to the injury.

I have now much pleasure in asking Dr. F. C. Trebilcock, of Toronto, to read his paper on eye injuries.

Dr. TREBILCOCK. I stand before you to-night with a feeling of diffidence, partly because this is something I have never done before, and partly because it has been rather difficult for me to get together something which would be of interest, or at least that I thought would be of interest, to the lay members of this assemblage, and at the same time not be too slow for those men who are perhaps even better versed along this special line than I myself.

Before I say a word about this paper I would like to present to you a patient of mine. Four years ago he came in contact with a high-tension Niagara current of 13,000 volts, which entered here [pointing to skull] and came out here [indicating hand]. This shock threw him against another wire carrying 2,200 volts, which entered this shoulder and came out on this hand. I am not particularly interested in these general muscular injuries. This ear was burned off, and a hole burned in his skull, which took two years to heal; but I am more interested in the double cataract that came on in the following March. In 10 days he was totally blind, and the circumstances were such, on account of having four little children and a wife to support, that rather too early, according to technical judgment, this cataract was removed. Fortunately, however, its removal proved successful, and he is now able to read with that

eye. This summer the other cataract was extracted, and although he can not yet read he is going to see exceedingly well. The second extraction is, from a technical standpoint, a much better one than the first. That is to be expected, because the second cataract had four years to mature.

I thought you might be interested in seeing a man who has come through what very, very few men do come through. His general injuries are quite severe. That hand is next to useless. Fortunately, it is his left hand. His right hand is nothing like normal.

[To patient.] Please double your hand up as hard as you can. [The patient complied.]

You see, that is practically a claw. This was one of the Ontario board's cases.

Mr. KINGSTON [to patient]. Can you recall what the award **was in** this case?

The PATIENT. Forty dollars a month for life.

Mr. KINGSTON. The patient tells me the award of the board was \$40 a month for life.

Dr. DONOGHUE. Can he use both eyes together, or does he still **have** one-eye vision at a time?

Dr. TREBILCOCK. The second cataract was removed in June, and we have not tried him with a double plus 13. After the eye quieted down and before we could get any vision at all a thing that non-plussed me and worried him was that the left eye continually moved up and down, and he had a vertical nystagmus. He saw two people and two lights—one quiet and the other continually on the move. In the last two weeks, however, since he has been able to expose this eye to all kinds of weather, the nystagmus is gradually passing away. He feels he is going to get a very good—I would not say stereoscopic vision—sight eventually.

A VOICE. What is his employment at the present time?

Dr. TREBILCOCK. Q. How long were you away from duty altogether?—A. Two full years. I have done 11 months' work since 1915.

Q. What kind of work?—A. It is more of a "thank you" job up in the electrical department; just handing out the supplies to the electricians there.

A VOICE. Has he other involvement?

Dr. TREBILCOCK. I can not answer that. I really have not been very much interested in his general condition.

Mr. KINGSTON. I take it that the board has treated the case on the basis of total disability. There were other injuries, of course, which would have entitled him to something had it not been for the eye injuries, but the eye injuries involve practically total disability.

Mr. ANDRUS. Should he recover his eyesight would you change the award?

Mr. KINGSTON. We know it is impossible for him to recover his eyesight. He sees through those artificial lenses he is wearing, but I understand the accommodation under the circumstances is not sufficient to warrant a change in the award.

Dr. MEEKER. You have not answered the theoretical question put by Mr. Andrus. In a case where recovery does occur, do you change your award?

Mr. KINGSTON. The board can change its award at any time, and frequently does so where circumstances warranting a change are brought to its attention; but you are supposing a condition that is far from possible in this case. There can be no recovery of sight in the sense that this workman could work with any safety around a factory or on a building or in an electric power company plant. Am I not right in that, doctor?

Dr. TREBILCOCK. Oh, yes. Of course, it is possible that in a couple more years, when he becomes perfectly reconciled and adjusted to his new condition, that he may be able to do more work than he does to-day.

Judge JACKSON. Is your patient practically blind?

Dr. TREBILCOCK. I think from an economic standpoint probably he is at the present time; but, of course, from the technical standpoint, he sees very well indeed; that is, he is able to read at a distance of 6 meters.

Judge JACKSON. He is not able to use his eyes except with the glasses?

Dr. TREBILCOCK. Quite so. If he attempts to read or do any closer work he requires much stronger glasses than he is wearing now.

Mr. KINGSTON. What would you say as to his field of vision?

Dr. TREBILCOCK. Nearly as wide as our own, limited, of course, by the fact that his glasses are very thick.

Judge JACKSON. What percentage of vision do you consider would allow practical use of the eye?

Dr. TREBILCOCK. I must confess I am not interested particularly in this side of the question, inasmuch as I am never asked by our board what percentage of vision a man has lost. I am asked to describe fully the condition and to state what he can see, and then the board decides what percentage of vision the claimant has lost.

Judge JACKSON. The only way I can understand it is by medical testimony, and if the board's doctor can not explain it the layman can not know anything about it.

Dr. TREBILCOCK. That is true. However, when one speaks of the loss of eyesight, it has so many different meanings. A man who

grew up on a farm and sees as well as this patient does would see as well as he ever did for the purposes of his work; but in the case of a man accustomed to fine work, such as an engraver or a linotype operator, unless he can do his work by the "touch" system entirely, he has practically lost his eyesight. It seems to me that is a question that can hardly be answered definitely without getting involved in intricacies from which it would be difficult to extricate oneself.

This question of eye injuries is very broad and indefinite, and because it seemed hard for me to hit upon anything which everybody would understand, I thought it worth while to occupy a couple of moments in building up in a very crude way a model of the human eye. It seems to me that in making drawings or models for illustration the more crude they are the better they answer the purpose, because it gives you such a splendid chance to allow your imagination to play.

The top part of this box will be regarded as an empty eyeball; that is, you cut the eyeball off and look into a round cavity. I am not particularly interested to-night in the rear three-quarters of an inch of the eyeball, which is filled with a jellylike substance, like the white of egg, and behind that is the retina and the optic nerve itself, but I am more interested with the anterior quarter of an inch, or a little more.

I want this to represent a double convex lens which each one carries in his eyes, and which always appears to me to look like half a large pea.

I shall put that lens in place. You are to suppose, of course, that it is a perfectly transparent double convex lens. It has on the front and back of it a piece of yellow tissue paper, and this tissue paper is to represent what we call the capsule of the lens.

In front of that I am going to put this iris diaphragm. It really is not an iris diaphragm, because you could dilate the opening and contract it if it were, but it represents very well an iris diaphragm fixed in one position.

This is the colored part of the eyeball. This is the pupil, and through that clear pupil you see a yellow lens. Of course, you do not see it in your own eyes because that lens should be transparent, and against a dark background it would be black.

The front part of the eye is now put in and represents the sclera, and this hole the clear window which we speak of as the cornea; so that this is covered by a transparent front wall or membrane.

This that I have in my hand is full of water with a little salt in it. Behind that partition, which is the lens, you get into the jellylike, the white of egg. That represents fairly well the front of an eyeball. I now want to wound that eyeball. I shall stick this knife that far. In your eyeball and mine it would represent not

much more than a simple perforation. You see how I am using the knife. It is running inward slightly toward the nose and slightly downward. That is, it is not likely piercing the lens, but is slipping just past the rim. I have not touched the lens; that is the wound as I want to describe one that I saw not very long ago.

The first thing that happens when that wound is made is an attempt on the part of the muscles which are attached to the outside of the eyeball, the muscles that draw our eyes up and sideways and down, to empty the eyeball. They are squeezing all the time, and the very moment that wound is made the attempt of these muscles is to empty the eyeball through the cut that is made.

A week ago I saw a man who had been drunk and does not know what hit him, but his eye was split right across the front, and when he came in it was empty. Everything had come out. Here, you see, the wound is small. However, there is the same attempt to get rid of everything inside through this small wound.

The first thing to come out is water. There is a little water with salt in it behind this iris, and it is trying to get out, and as it tries to get through it pushes the iris in front of it, with the idea, perhaps, that the iris would be pushed out; thus the iris is driven into the wound so. That spoils the shape of the pupil and creates what we call a "keyhole pupil"; but it stops the leakage. It acts as an effectual cork. The knife was driven in, remember, so that the lens was not touched.

I had a little preliminary, but I will skip it because I have been so long with my description, and will now read my paper.

## EYE INJURIES.

BY FRANK C. TREBILCOCK, M. D., TORONTO, CANADA.

Every man enjoys the opportunity of speaking to others upon his hobby, and I am no exception to the rule. I take it as an honor that I am allowed that privilege to-night, and herein desire to express to you my appreciation. Quite justly you have linked with that honor the responsibility of doing what has proved a rather difficult task—namely, making a complicated and technical subject so simple and ordinary that I hope those of you, expert along other technical lines, may enjoy the paper, while my own confreres in the work may not weary.

Certain phases of this wide subject were dealt with in a masterly manner at a previous convention by the president, Mr. George A. Kingston, but I hope to open others, so that while, perhaps, reviewing some things of which he spoke, and adding others, your interest will be kept alive in this difficult group of cases.

I do not intend to enter into an abstruse discussion of any subdivision of this great subject, but to draw for you a picture or two of discrete cases, with explanatory remarks as we progress.

This claimant is a man of 54 years, comes from the country, and was injured by a flying spicule of slag, which pierced his right eyeball. He is accompanied by his wife, who generally answers for him, and volunteers the information that she came with him because he is unaccustomed to the city and might get lost. He holds his head down and cringes under the light; the attempt to get him into position for examination near a tungsten lamp causes most marked screwing up of the eyelids (blepharospasm). While writing some preliminary notes we notice, by taking hidden glances at him, that the eyes are open and the spasm gone. The general behavior of the man, the volunteered and obvious support of the wife, suggest an exaggerated attempt to impress us with the serious results of the accident; perhaps he is badly injured; perhaps simply neurotic; perhaps malingering. Let us see.

The right eyeball has been injured; there is a scar in the scleral coat, extending downward from the corneal margin in a vertical direction for about three-sixteenths of an inch. It is dark-colored and marks a perforation of the globe by a sharp foreign body—in this case a piece of slag (glass). Above the wound area there is a

small diffuse grayish scarring, but it is limited in area, and does not extend into the center of the cornea, so that the part over the pupil is preserved in its perfect transparency.

The wound area does not bulge, is soundly healed, and there is no evidence of corneal or conjunctival irritation. So far as the outer wall of this eye is concerned excellent recovery has followed the wounding.

Let us return now to his lid spasm in the presence of light and the hanging of the head. Now, photophobia or horror of light is nearly always dependent upon superficial lesions. Remember how the children suffered when their eyes were sore in measles; or try to forget your own distress when you had that cinder in your eye; and these are manifestly surface irritations. So that with the mucous membrane of this eye so free from evidence of irritation, the healed wound, and the clear cornea, the man ought not to have photophobia and blepharospasm. But below this surface structure there is sign of abnormality. The pupil is not round, as it should be, but is elongated vertically until its lower edge is lost behind the corneal rim. This gives us the so-called keyhole pupil; the absence of the segment of the iris is named coloboma. Such shaped pupils are occasionally seen in congenital abnormalities, but we are justified in considering this one as a sequel to the accident.

There has been perforation of the external coat of the eyeball; a spicule of slag has made a vertical stab into the rim of the anterior chamber of the globe, and on its withdrawal the squeeze of the muscles which move the eyeball in the socket has tended to empty the contents through this small opening. Some water first escaped, then luckily the iris below the pupil was forced into or against the inner aspect of the wound, and all leakage ceased. Healing took place without infection, but the slight inflammatory bands or adhesions held this part of the iris in its new position, and when final repair is complete it can not return to its normal place; the coloboma is permanent. The only point of danger is that this bit of iris may be forced into or through the wound as my handkerchief lies between my fingers, and so interfere with the coaptation of the wound edges and prevent satisfactory healing.

In the case under discussion either that complication did not take place or the offending part was successfully removed by the attending surgeon, for here we have a perfect scar.

Looking now at this keyhole pupil under varying intensities of light we see that the free edge moves from center to periphery, and vice versa, except in that segment where it is glued to the under-surface of the wound area. This pupil is movable, as it should be, except where mechanically tied, and as the color of the iris is exactly like the other one, we decide that there is no permanent damage done

here, for unless complicated we do not consider the coloboma a very serious matter.

A glance into the keyhole pupil shows it black as the other one, so that if there be no deeper injury, little harm has been done.

The examination of the deeper parts of this eyeball is now made in the dark room by reflected light. This is not easy to demonstrate to the unpracticed man, so that you will have to accept our word for it that there is no lesion to be made out; that is to say, the crystalline lens is in its proper place immediately behind the iris and supporting it, and is perfectly transparent. Had it been scratched or pierced by the spicule of slag, it is probable that it would show a definite cloudiness, certainly at the point of injury, and likely throughout its entire substance; that is, we would have a cataract following the puncture—the typical traumatic cataract.

In the case before us, either the glass needle did not penetrate deeply enough to touch the lens or it entered so far from the corneal margin as to be external to the rim of the lens, whose position is roughly indicated by the circumference of the cornea.

Searching carefully the posterior segment of the globe, that part behind the crystalline lens, we can find no sign of any lesion; all the structures therein contained, so sensitive to injury, so important in the process of proper and exact optic-nerve stimulation, are normal in appearance.

We should now know this eyeball from the physical standpoint thoroughly. We have noted the cosmetic blemish, the abnormal pupil, but are sure that in the direct pathway of the light rays from the object reflecting them to the retina of the eye there is no obstruction visible to our normal sight. We must conclude that so far as this eyeball is concerned the claimant ought to see, and to see almost perfectly.

I have purposely explained the eye condition to you in detail before letting you know his complaint; it is that he can not see anything with his injured eye, and that his good one is getting weaker; he is emphatic that he can not count my fingers at 1 foot with his right eye. The vision of his left eye, the uninjured one, is admitted to be  $\frac{6}{24}$ ths, but is improved to normal,  $\frac{6}{6}$ ths, with a spherical lens of one unit.

The very exaggerated contortions when he first came near the light, the normal pathway for the light rays, with denial of sight, and the indefinable atmosphere about the man have aroused our suspicions of fraud from the beginning. It remains to prove the fraud and to make it clear to the man himself.

He sits opposite the ordinary testing card; with both eyes open he is told to read, and he reads easily the lines 1, 2, and 3. Into a pair of spectacle frames which he wears we put two convex lenses,

so strong as to blur these lines and make them unreadable; he says he can not read the top letter now. Next, in front of these lenses we place another two, but not mates—in front of the injured eye a concave one of the same units as the convex one already there—so that this convex one is now neutralized, and for examination purposes he now wears over the injured eye what is equal to plane glass, or to no glass at all; over the good eye we place another convex glass, so that the strength of the lens already there is added to and the blur increased for this eye—the blur which he admitted a moment ago. These additions must be made quickly and simultaneously, and he must not be allowed to close either eye. You will understand that whatever he can read now he will see with the injured eye, although he will suppose that he is still using both together.

He is now asked to read; is asked without delay, for he must not have time to think; and our conduct and conversation must not suggest that we are trying to put him in a corner. Without a falter he reads the third line from the top of the card just as he did before; and it is obvious to us that he reads it with the eye which a few minutes ago he had declared was so blind that he could not see his hand before his face. By covering this eye and giving him a new card he will have to admit that his good eye can not read the top letter, and that he really was reading with the injured eye.

There is therefore no disability, for the right eye sees as well as the left one. This one fact is the end of our interest in the case.

Of course there are confirmatory tests which may be used, but in this case none was necessary, and I will not weary you with details of them.

Before leaving this type of accident let me cite another case of almost identical wounding, with results more happy from the cosmetic standpoint, more unfortunate from the economic one. This man has the same sort of injury—a stab by a bit of slag, sharp as a needle. The position of the external wound was just inside the corneal margin, instead of outside, and the penetration deep enough to puncture the iris, making a permanent eccentric pupil and piercing the lens. At first I was anxious lest a small particle might be still in the globe, but as the X-ray will not show glass there was no way of making sure on this point. In an hour after the puncture took place there were such changes in the lens transparency that one could not distinctly see the details of the vitreous chamber; the traumatic cataract was already developing. The sight of this eye is permanently very defective.

These two cases taken together illustrate many points frequently seen in punctured wounding of the eyeball, which remains free from infection: The scleral pigmented wound, the coloboma of the iris, the perforation of the iris without iritis, the permanent eccentric pupil,

the traumatic cataract following the prick of the lens. I am glad to say that the attempt at fraud is rare.

The brief review of this second case leads us naturally to a discussion of the subject of traumatic cataract. In the paper read before you two years ago by the president your attention was drawn to those lens changes of obscure origin which occasionally follow high-tension electric charges. The type of which I speak now is much easier to explain. This ordinary variety follows a break in the integrity of the lens capsule, that skin-like bag which incloses the proper substance of the lens in the same way that the chamois-skin pouch inclosed the chased-gold watches of our fathers. So long as this capsule is intact the crystalline lens is protected from the clouding influence of the contact with the watery humor just in front of it; but if a rent takes place in the capsule, so that this aqueous humor can get through, then perfect transparency is lessened and cataractous change begins. I suppose that we would be justified in saying that the great majority of punctured eyeball wounds in the area covering the lens are followed by traumatic cataract, with defective vision, often complete loss.

From one standpoint this sequel to accident may be considered a fortunate one among the many which may occur, because the cataractous crystalline lens can be removed, and if there be no complications, either of the original wound or at the time of operation, satisfactory vision may be restored. However, in practice the problem is a difficult one. It is so easy to say to the patient, "Wait a while, until all signs of irritation are safely past, and then we will extract the cataract, and it is a good gamble that a reasonable measure of sight may be regained."

We have instance where such a course was followed. Traumatic cataracts were very successfully removed and excellent sight regained in the injured eyes, but persistent double vision worried the men when both eyes were used together, and the surgeons would be as delighted to return to the men their cataracts as the men would be to get them. This is, happily, a rare sequel to operation, but must be always kept in mind and fully explained to the patient when he asks for an operation. I shall not worry you with the elaborate explanation of this complication, but remember that a lens of approximately 3-inch focus has been removed from the eyeball, and if anything like normal vision is to be gotten, a lens of equal strength or near it must be worn in a spectacle frame in front of the eye. This new arrangement works very well, indeed, in the vast majority of cases where the eyes can not be used together as when the other one is defective, and it works well in many cases where the uninjured one is normal, but occasionally it will not work at all. It seems to me that where one eye is performing its function normally and the operated one has

to be so artificially assisted, the miracle is that either of them works well.

I know that one seldom hears complaints after these operations for traumatic cataracts, but we must not forget that there are a very large number of persons who, having deeper injuries to their eyes, do not get good enough vision to cause the annoyance, and then there are exigencies at some operations which mar the outcome. I do not suggest that traumatic cataracts should not be removed when the vision of the uninjured eye is normal. I only maintain that it is a difficult problem to decide what will be best for the patient, especially when he does his work without much inconvenience, and the only indication for operation is either the cosmetic one or the widening of his visual field. I think that all the possibilities should be discussed with intelligent patients until we see that they fully understand, and that then they should be given the right and the duty of choice; and that in cases when the injured ones are unintelligent or illiterate it is better to leave well enough alone.

I have here a short résumé of an examination of a man where the cataract on one side was removed successfully. The other eye was good. He can not use them together. That man would give a great deal if he could only get that cataract back.

The CHAIRMAN. Is there to be any discussion on Dr. Trebilcock's paper?

Dr. MEEKER. It seems to me that the interest manifested in Dr. Trebilcock's paper would suggest discussing it at this point.

Mr. ANDRUS. I would like to ask if a man has 20/40 vision, or any other fraction, have all the men who have lost the same amount of vision lost the same amount of vision expressed in percentages? Do I make myself clear?

Dr. TREBILCOCK. I am afraid I do not quite understand.

Mr. ANDRUS. If there are 100 men and they all have 20/40 vision, have they all lost the same amount of vision expressed in percentages?

Dr. TREBILCOCK. I should think not. That was the point I suggested when I spoke of the farmer as compared with the engraver or linotype operator.

Mr. ANDRUS. Aside from the business in which they were engaged, would the percentage be exactly the same in all cases when making your report?

Dr. TREBILCOCK. I think President Kingston should answer that for me. I suggested a moment or two ago that in any work I have done for the workmen's compensation board I have never considered it my duty to even suggest a percentage. I have simply made a technical report such as I would have made for another doctor who

sent a patient to me for examination. That, I believe, has been satisfactory to our board.

Mr. KINGSTON. I may say that when Dr. Trebilcock says he does not suggest percentages he means percentages in terms of vulgar fractions; but he always suggests 20/40, 20/60, or whatever it may be. We determine the patient's case with all the reports before us.

Mr. ANDRUS. Do you determine that by a table?

Mr. KINGSTON. It is difficult to say offhand just how we do determine it. We have no scale or table as you suggest for partially injured eyes, and I confess it was difficult at first to find a basis satisfactory to ourselves for deciding these cases. We went ahead making our awards, however, after sizing up the physical conditions as best we could with all the reports before us, taking into account in each case the age, wages, and respective occupations of the claimants, and I feel that we have reached fairly satisfactory results. I do not think it is possible, however, to prepare a scale that would do justice to the varying circumstances of all cases of this sort. Each claimant must be considered in the light of all the relative factors, and it is seldom we find two cases exactly alike. I discussed this type of case at some length from the point of view of the Ontario board in my paper at the Boston convention. (See Bulletin 248, p. 269.)

Mr. ANDRUS. I received a letter from Mr. Wilcox asking what our plan was. I told him that an eyesight specialist in Chicago had prepared a table giving the percentage of loss in certain cases. He wanted us to adopt it, and when asked why he wanted us to adopt it he said the doctors could not agree, and if we would adopt it it would help the doctors. It looked absurd to us to step in and tell the doctors their business, and we thought the eyesight specialist who examined the eye should tell us what percentage of vision was lost. We may be wrong about this. I have been asking my questions with a view to obtaining light on the subject. Is it a medical question or a legal question?

Mr. KINGSTON. I take it that it is a medical question to report to the board in as clear language as a doctor can use on the condition in which the workman's eye is found; and I may say that the reports we receive from Dr. Trebilcock are reports on the man after the eye has reached what we call a fixed, final condition. If it is not in that condition the doctor's report will indicate it, and probably if there is a progressive condition the case will be held in abeyance for another six months or so, and sent back again for further examination.

Mr. ANDRUS. Do you consider the business in which the man is engaged?

Mr. KINGSTON. Oh, yes. I should explain further in answer to Mr. Andrus's inquiry as to a table that we always rate complete loss

of vision at 16 per cent of total disability, but if the eye is enucleated we rate it at 18 per cent, and in the case of the injury Dr. Trebilcock has described, that of lost lens, 12 per cent. It is well known, of course, that a lost lens eye is for the time being practically blind, because it will not mate up with the other eye, but in the event of losing the other eye he has this injured eye in reserve, which by means of an artificial lens would afford him very useful vision. Each of these ratings is subject to certain occupational differentials.

Mr. ANDRUS. Suppose your law is such that you could not take into consideration the business in which the man is engaged, would you then consider the loss in percentage a medical or legal question?

Mr. KINGSTON. I would take it that that is for the board to determine.

Mr. ANDRUS. How are you going to determine it?

Mr. KINGSTON. I suppose by the application of common sense in relation to all the circumstances.

Dr. TREBILCOCK. I should hope there is no such law in effect.

Mr. ANDRUS. We have one.

Dr. TREBILCOCK. I think that law should be changed. It appears to me that a doctor doing the kind of work I do—private work all day—if a man comes in who happens to be injured, it surely is not my duty to decide whether that man has lost 20 per cent or 30 per cent of sight. Here are the cards on the table, or perhaps our own board has the letters printed on the back of the form sent out, and all that any medical man should do is to say “This man can read with one eye this line or that line or no line at all,” or that he has to stand 2 feet from the card to read the top one and can read the small print as well—print No. 1, 2, 3, or 4—and that ought to end it. Now, if that man is a navvy, working up in Mathieson, and has never done anything but pick-and-shovel work on the surface or in a mine, surely he has not lost the percentage that a man who is setting diamonds down in Ryrie’s jewelry shop would lose. I do not think I have time to worry myself about these things. It is not my business. I have not the data to do it, but the compensation board has the data. I do not know which is right or wrong, but I may say I far prefer the method followed in Ontario.

Mr. KINGSTON. Perhaps I should make a word of explanation as to Dr. Trebilcock’s relation to the board. He is not a medical officer of the board. He is a doctor to whom we refer specially difficult eye cases for examination and report. He is in private practice, and I have asked him, because of the fact that he has done so much of this work for the board, to prepare this special study he has given us to-night.

I thought possibly some of the gentlemen present might think Dr. Trebilcock was a paid official of the board.

Mr. ANDRUS. I think you have made a most excellent selection. I understood the doctor to say that, considering the occupation the man is engaged in, those fractions do not always mean the same percentage.

Dr. TREBILCOCK. I think if all men were engaged in the same business that would be true.

Mr. ANDRUS. Then is it not a medical question to determine what that percentage is? It could then be determined from a table.

Dr. TREBILCOCK. It might in that sense, although I think it is an economic rather than a medical question. It seems to me that it could be better decided by a group of men setting jewels in the case of a disabled jeweler. The man could come forward and say, "I consider I have lost 50 per cent of my earning capacity," and they would understand him.

Dr. MOWELL. It seems to me what Mr. Andrus is trying to get hold of is the difference between the vision in an eye that reads the 20/20 line and one that reads the 20/40 line only. A certain degree of light sense is requisite to enable us to recognize an object; i. e., the eye must be able to perceive the difference in brightness of the contiguous surfaces. The eye must also be able to perceive the form of a contour and to recognize the details of an object. This function is dependent in many respects on the light sense. The acuity of vision is determined by the smallest angle with which an object can be seen. The smaller the angle and the smaller the retinal image, the greater is the visual acuity. The interval between two points at a certain distance, which just enables them to be perceived separately, is called the minimum separable; so vision depends on the ability to distinguish two points or lines, and, so that there may be a unit of standard, the visual angle of one minute was selected on which all test charts are made, and an eye that we call normal is able to read the 20 feet or M letter at 20 feet, and would be written 20/20.

Suppose now, that a patient who has a dense corneal opacity with which he can not recognize the 20 M letter, but on bringing him within 10 feet of the card he reads this letter, we would record his vision as 10/20, or at 20 feet we would have to record his vision 20/40, so this man's vision is less than normal. So we can express the visual acuity of an eye by a fraction, the numerator of which gives the distance at which the letter can be read, the denominator, the distance at which it should be read by the normal eye, so we have  $V=d/D$ .

The Snell chart is not very exact, because in large letters the fine point of vision is not the same as in the small object, and they are partly read by their form. The best method is by a ring of interrupted spaces.

Following out the equation where the patient can only read the 20/200 or 5/50 line, we would have  $V=5/50=0.1$ , and in that case the patient would have one-tenth normal vision. If this was caused by an accident, the man has a great loss of vision in this eye.

In the case of a man who can only read the 20/40 line so far as this one eye is concerned, and compared with the man who can read the 20/20 line, so far as acuity of vision is concerned, he has lost 50 per cent of his vision in this one eye, but in economic vision he has only lost about one-tenth. Dr. H. V. Wurdemann, of Seattle, who had the rank of major in the Army (former residence, Chicago), in his book on this subject relative to mine workers, etc., has very carefully worked out the actual loss of vision and also the economic loss, which are about what I have stated.

The CHAIRMAN. I am afraid we will have to curtail the discussion.

Mr. WILCOX. I came to this convention with the firm intention of doing something, nominating a committee and making a study of the rating of disabilities of eyes. If, as Dr. Mowell says, Dr. Wurdemann has got this all worked out in a table, and says that 20/40 is half vision lost, he had better work it out again.

Dr. MOWELL. Half lost vision in that eye, but in the case of economic vision only about one-tenth.

Mr. WILCOX. If he says 20/40 means that a man has lost half his vision he had better work his table out again. It does not mean anything of the sort. I have got to the point where I have seen so much of doctors I am not afraid to talk back. Wisconsin has been engaged in these last months in trying to work out this very situation. With the advent of the United States into the war we found the examining physicians were finding many cases of men who showed 20/40 vision, and they were taken into the service as men with good vision. We know that 20/40, so-called, is good vision. It simply means that a man sees at 20 feet those things he should be seeing at 40 feet. All you have to do is to apply your own good common sense; 20/20 means normal vision, but 10/20 means that I have to get within 10 feet of the chart in order to read it; but I have lost much less vision than one-half. I do not know whether it was Dr. Cradle or Dr. Alport that supplied the Chicago board with a table. They used this chart simply for the purpose of reading. Originally they used the Roman numerals for the denominator. It was not intended to indicate a loss of rating. Last Friday I had notice for hearing in the city of Milwaukee eight different eye-injury cases, and we invited people in from Chicago, and all the insurance companies from the States brought in their experts, and we took their evidence upon the rating of eye disabilities at that time. We took their testimony and they practically agreed on what the extent of

loss of vision was according to these various readings if you had no other complicating circumstances.

We first fixed the point where economic loss of vision set in, either at 20/200ths or 20/222nds, and saying, "When you get a lesser vision than that you probably would not be able to do normal work."

I want to say, in conclusion, that we were convinced that under the Wisconsin act and the various acts of the country we will not be able to take into consideration the character of the man's occupation. Dr. Cradle took the correct stand that you had to determine dead perception in order to take into account what this man's loss was.

Before this convention ends I want to have another opportunity of presenting some plan by which we can make a study of this question of how to rate eye disabilities.

Dr. MOWELL. It is not a question as to the amount of work the man can do or see to do after the injury to his eye, but the amount of reduction in acuity of vision he has suffered—i. e., how far below normal his vision now is as a result of the injury to that particular eye. In the State of Washington he is not awarded on the kind of work that he is able to do or see to do after the injury, but is awarded on actual damage to the eye.

Mr. FRENCH. The California schedule takes the occupation into consideration. California is the only State that does. Our schedule has been very successfully operated under that plan. We also take into consideration the nature of the injury or disfigurement and the age. The Government found out how the different compensation commissions handle permanent injuries, and is following the California plan as the basis for paying permanently hurt soldiers and sailors, simplifying somewhat the schedule.

I would like those interested to discuss the schedule with the California commission and ascertain its underlying reasons, because it has been worked out by medical experts and mathematicians under the guidance of university professors.

The CHAIRMAN. I have now much pleasure in asking Dr. F. D. Donoghue, medical adviser, Massachusetts Industrial Accident Board, to read his paper.

## NEED OF RECOGNITION OF AND BETTER TREATMENT FOR MENTAL AND NERVOUS INJURIES.

BY DR. FRANCIS D. DONOGHUE, MEDICAL ADVISER, MASSACHUSETTS INDUSTRIAL  
ACCIDENT BOARD.

It has been extremely gratifying to watch the evolution of the idea that efficient and sufficient medical treatment is a fundamental of workmen's compensation. I believe that papers before this association and the spreading of the gospel of light by the members of this association, as they have gone out from these meetings, especially the work of our secretary-treasurer, Dr. Royal Meeker, have been determining factors in gradually carrying the truth home.

Last year I called to your attention the disabilities of the hand and the need for specialization in the treatment of this class of injuries if the disability period was to be minimized and the future efficiency of the injured workman maintained. This year I will take it for granted that we all agree that continuous adequate medical treatment is a necessity and not a luxury, and whether or not the obligation is carried in the law under which a board operates, insurance companies have recognized the necessity of providing care, irrespective and independent of their legal obligation, if they are to continue to be successful in the compensation field.

The new law of Nova Scotia, which our good friend Armstrong prognosticated at the Madison meeting, shows how far it is possible to go in the administration of a State fund, and while the terms of section 1 and section 3 in regard to medical aid (quoted below) may seem to us drastic, it will be interesting and instructive to compare this direct control with the more lax, indirect, or absent control of treatment which obtains under other commissions.

SECTION 1. Every workman entitled to compensation under this part, or who would have been so entitled had he been disabled for 7 days, shall be entitled, during the period of 30 days from the date of the disability, to such medical and surgical aid and hospital and skilled nursing services as may be necessary as a result of the injury.

SEC. 3. Such medical aid shall be furnished or arranged for by the board, or as it may direct or approve, and shall at all times be subject to the supervision and control of the board, and shall be paid for by the board out of the accident fund or as herein otherwise provided; and such amount as the board may consider necessary shall be included in the assessment levied upon the employers.

While the disabilities of the hand and the upper extremity are extremely costly in every sense of the word, there is a group of cases

perhaps not so expensive from a monetary standpoint but more trying to handle, and for which less facilities exist than for the greater group of cases, surgical and medical, with which we have most to deal.

No group of cases indicates the value of a medical adviser to a board any better than the group of cases that I am about to discuss. No man can possibly be an expert in all the lines of medical activity which have contact points with the administration of the workmen's compensation law; and to my mind the best administration will be obtained that utilizes for the purposes of administration the best that the medical community affords.

I have been aided in the preparation of this paper and in my work as medical adviser by having as advisers and impartial physicians, Dr. William J. Daly, of the neurological department of the Boston City Hospital; Dr. H. B. Eaton, neurological department of the Massachusetts General Hospital; Dr. Edward B. Lane, superintendent of the Adams Nervine Asylum; and Dr. Elmer E. Southard, director of the psychopathic department of the Boston State Hospital. I wish to acknowledge publicly my obligation to these gentlemen.

In the beginning of the workmen's compensation law abroad, and in the early papers about workmen's compensation in this country, attention was frequently called to the dangers of valetudinarianism, not in the sense that the word is ordinarily used as applying to a person in infirm health or subject to frequent illnesses, but in the sense of a person who, by prolonged introspection, acquires the habit of ill health or does not acquire a desire to return to work following injury.

From our experience I am convinced that where these conditions exist they represent in great measure a lack of diagnosis or understanding of some real condition which, if properly diagnosed, might be remedied.

In the early days of the war, before the effects of psychic trauma were recognized, I am informed that the French and English were drastic in their treatment of those who showed mental lapses which had not up to that time been properly diagnosed or classified in psychic pathology. The treatment accorded to those losing the use of their mental stabilizers under stress of warfare is comparable in a measure with the maltreatment of those who suffer psychic shock with its various manifestations in times of peace, and who come before our various accident boards.

Dr. E. E. Southard, at the meeting of the International Association of Industrial Accident Boards and Commissions in Boston in 1917, pointed out one source of failure in the proper care in this group of cases.

Dr. Southard stated that:

As you are aware, those of us who deal with mental diseases, whether practically or theoretically, as a rule find ourselves brought into medical councils, if at all, at the eleventh hour. The lack of progress in the psychiatric branch of medicine is due not entirely to the complexity of the topic, but largely to actual neglect on the part of those who are concerned administratively, either in medical schools or in medical institutes, with the development of departments and the choice of research lines. Of course this neglect is in itself partly due to the feeling of the complexity of the topic, a feeling entirely out of proportion to its actual complexity. But if the heads of medical schools and of medical institutes for research are prone to neglect the nervous system and the mind, it is not at all true of such companies of practical men as are found in industrial accident boards and commissions.

Dr. H. M. Adler, of the Psychopathic Hospital, has presented another paper on "Unemployment and personality," and in that paper Dr. Adler calls attention to three main factors—feeble-mindedness, paranoid conditions, and periodic emotional diseases—for difficulty in industries as related to mental disease and defect. How many industrial accidents are really due to psychopathic conditions it is impossible now to say, but it is clear that one of the major groups in Dr. Adler's analysis—namely, the feeble-minded group of workmen—must be responsible for a good many accidents, despite the fact that the higher grades of feeble-mindedness are entirely consistent with good routine industrial work for years and even decades. These are the cases which, when the routine is interrupted by accident, are so difficult to get back to working ability.

Dr. Adler has also made another contribution on "The psychopathic employee," which carries the idea still further and gives summaries of actual cases upon which the psychopathic hospital conclusions were founded.

I will not quote further from this excellent paper of Dr. Southard's, but will refer you to Bulletin No. 248 of the United States Bureau of Labor Statistics, for a résumé of the cases which were studied by Dr. Southard for the Industrial Accident Board of Massachusetts.

Certainly it appears that the proportion of these cases is on the increase, and this increase brings with it, unless the cases are closely analyzed, a feeling of exasperating helplessness—a feeling at times that a good law is being hampered and being ridden by cases which, superficially considered, appear parasitic. But that a large portion of these cases are genuine and are closely connected with or modified by some subsequent injury, is undoubtedly true.

The ability to separate the individual who is generally confounded with this class—namely the malingerer—is a task which is difficult for the skilled medical diagnostician and it should never be forgotten that an apparent malingerer may have the symptoms of a border-

line psychotic condition. What can be done for these cases and what to do with them, merits careful study.

The community is full of a large number of people who are hanging on by the skin of their mental teeth, who are potentially and oftentimes really cases of dementia præcox, but who are able to sustain the ordinary burdens of life up to a certain point of stress and then become the pronounced psychotic.

The difficulty in handling those cases which proceed from a mental basis, arises primarily from lack of proper classification which is due to inexact diagnosis. It may seem trivial to say that it is frequently difficult to diagnose a functional nervous condition, call it what you will, but the fact is that the treatment of these nervous conditions which shade off into each other and resemble each other so closely is so radically different that the success of treating the group depends upon the proper treatment of each component part.

As regards the subdivision of the class, a good working classification of these cases, call them what you will, is:

Hysteria after injury.

Psycasthenia after injury.

Depressed states and melancholia after injury.

Paranoiacs.

Querulents.

All cases come into your office as either physically injured or functionally injured or a combination of the two, and the third class is far more frequent than is generally believed to be the case. Simply because the injury does not stick out, it does not follow that this is not a condition. There they are separated by you in their diagnosis of physically injured and functionally injured, sent to your impartial and come back. In that stage I maintain that there comes into the case psychologic or physiologic evaluation.

As the geologists have a scale of hardness, there may be an *c. v. i.* scale, the measured index of the individual's will to work—*ergo volitional index*—numbers from 1 to 10; 10 the downright malingerer and all others being on the basis of our hysterias and psycasthenics, lacking ability to get a grip on themselves for purposes of recovery from injury and return to work. Having gotten that, your course is changed as to whether you have the functionally injured or the organically injured.

In the case of the man who is a problem case, it is the function of the vocational director. The medical adviser's function is fulfilled. He has made the diagnosis, he has given the medical opinion as to causal connection and the probable disability and the active function of restoring the man to the equal scale has been done.

On the other side, in the case of the functionally injured, such a case should be examined as to its e. v. i., its emotional stability, its abulia (index of will power, facilitated or diminished mode of release), and then put in its proper therapeutic channel according to the last stated factors and its medical diagnosis.

What will we do with our hysterics? It depends upon the form of hysteria. When contractures are present it must be treated as an organic case and contractures must be put up frequently in the opposite surgical sense to the direction in which the contracture obtains. Etherization and manipulation often will cure. Tremors will require rest. Certain light forms of hysteria are best treated by work. Major hysteria and hysterical insanity must be treated as insanity per se.

The treatment of hysteria depends upon exact diagnosis within the term hysteria. One man may say to you, Why, yes, hypnosis is a panacea for all hysteric ills, and in many instances the properly directed effort of a sympathetic commissioner may act as a hypnotic agent.

*The psychasthenic cases.*—Dr. Edward B. Lane, of the Adams Nervine Asylum in Jamaica Plain, has served as impartial physician on many of our cases. The institution with which he is connected is devoted to the care of cases of the psychasthenic variety, and it has been a rule to exclude cases where there was litigation. In their experience they get practically the same symptoms where there has been no litigation or injury, but serious mental strain.

Dr. Lane says that in his opinion the very first essential to care for these cases is a sympathetic knowledge of the condition and understanding of the patient, and people who have these, it seems to me, are rare. Each individual case must be known and the various treatments adjusted to it, never forgetting the condition is undoubtedly a mental one, and it is a state of mind that we are relieving rather than any definite lesion.

These patients need sympathy without coddling, and it is the delicate adjustment in this respect that is so difficult to apply. Patients vary so much in their wants and needs that I should despair of laying down any routine treatment. Three or four hysterical patients associated in a ward can demoralize a hospital. What one doesn't think of, the other can. Isolation is absolutely essential. Restoration of some of these cases is slow. Dr. Lane says that he finds that it often takes a year before there is recovery. Rarely recoveries are instantaneous. While they may be looked for, they are not to be expected. In the traumatic cases we may find strong mental suggestion of permanent injury. This suggestion sometimes becomes thoroughly fixed, and there are subconscious reactions, severe localized pains, hyperæsthesia, or anæsthesia. It

is often easy to divert the patient's attention; but if these symptoms go away they are bound to return on successive days. The more recent the hysterical symptoms the more quickly may they be dissipated.

Dr. Lane further states that at his institution the majority of the cases they see there (psychasthenics) are almost wholly results of the emotion of fear. Young nurses are quite often prone to say the wrong thing, but such conditions are unavoidable, and if the patient has faith in the medical adviser they will not be disturbed by these incidents.

Solicitous parents and friends are, in his opinion, more harmful than any errors made by outsiders. Home care is very inadvisable. If a patient can be sent to a place that acquires a reputation for cures without too harsh measures, much can be done. Of course incidentally in the case of the psychasthenic the minor complaints must be attended to. Simple remedies and placebos must be given, and of course all complaints should be carefully investigated. When a patient is satisfied the investigation is careful he is often willing to accept the judgment of the doctor. If the doctor assumes that there is nothing the matter, the patient knows he has not investigated and will never be satisfied with his findings.

I have not attempted to give you gentlemen a full course in the treatment of this group of cases. There are many books on the occupational and industrial therapy of this important group of cases to those who are interested.

My sole desire at this time is to call your attention to the need of calling to the assistance of the boards men competent to diagnose and advise treatment in this group of cases, and through them to encourage the further standardization of this group of cases. The present method of handling them, by exerting constant pressure from the insurance physician, insurance adjuster, or compensation commissioner, is not always a success.

Nonacceptable work forced upon a man or forced at a man tends to develop in him the reaction against work. Forcing a high-class man to sweep a floor may not be treatment and may be the opposite.

The difficulty of the administration of workmen's compensation by lay boards in this group of cases comes down to the unsurmountable fact that there is no specific treatment for hysteria.

When a case comes to the office it is not a case coming to the front office looking for information; it is a human being coming more for relief than for monetary compensation.

The CHAIRMAN. I have now much pleasure in calling upon Dr. J. W. Trask, chief medical director, United States Employees' Compensation Commission, to read his paper.

## THE SECURING OF PROPER MEDICAL SERVICE FOR INJURED PERSONS.

BY JOHN W. TRASK, SURGEON UNITED STATES PUBLIC HEALTH SERVICE, MEDICAL DIRECTOR UNITED STATES EMPLOYEES' COMPENSATION COMMISSION.

The underlying purpose of compensation legislation is to relieve the injured employee of the loss and burden resulting from industrial injuries. The loss in these injuries is essentially one of physical damage. Physical restoration is the one means of actually repairing the damage and restoring the loss. Loss of wages and compensation therefor are in a measure incidental. This is true notwithstanding the fact that legislation began at the other end of the problem, first supplying an amount equivalent to part pay for the employee during the period or a part of the period of disability, ignoring largely the question of physical restoration. The granting, however, of compensation for time lost was essentially an acknowledgment that it was not proper to place the burden of an industrial injury upon the shoulders of the employee. This being accepted it follows that the employee should be restored in so far as possible to his previous physical condition. Physical restoration is accomplished through medical treatment in its broad sense. To be effective it must be competent and adequate.

Most of the cases coming before the United States Employees' Compensation Commission are surgical in nature. The whole question of adequate medical service, in so far as the experience of the commission is concerned, depends upon getting the injured employee under the care of a well-trained, competent surgeon, if possible one who possesses a pleasant personality.

In years past there have been in existence throughout the country many medical schools with limited facilities, giving very inadequate training. Large numbers of the graduates of these schools are at present engaged in the practice of medicine. They are frequently competent neither as physicians nor surgeons, as we understand these terms.

It is also true that the physician engaged in ordinary general practice, either in the city or in the small town or country, usually sees comparatively few injury cases. Even though he is a graduate of what is recognized to be a good medical school, and though he have a considerable general practice, he does not usually have the opportunity of becoming proficient in the handling of cases of serious

injury. His practice includes mainly patients affected with sickness and disease. His experience in the handling of fractures, and often too, in the handling of infections of the extremities, is limited. He will probably see or have charge of but a few of these cases in the course of a year, often a very few. It is, therefore, more a matter of justifiable surprise when one finds a physician engaged in general practice who handles these cases efficiently and in such a way as to secure the best possible results.

The impression prevails somewhat commonly, although perhaps not so commonly as a number of years ago, that if you are sick or injured you will get that magic drug or application which will cure you by going to a person, any person, who practices medicine or is known as a "doctor." This may have been more or less true, or may at least have been accompanied with less disastrous results in those times when poultices, harmless lotions, or at most bleeding, were the possible extent of the treatment, under conditions when surgery had not reached its present stage of development, when the practice of orthopedic surgery was limited and crude compared with what it is to-day, before the discovery of the X-ray and its possibilities, and at a time when the highly trained medical man was so rare as to be a factor beyond ordinary consideration.

Sending an injured person to a "doctor" is not necessarily furnishing medical treatment; in fact, it may have the very opposite effect, because, as long as the injured person is under the care of an untrained medical man, the chance of his getting under the care of a well-trained physician is diminished. But in the proper treatment of beneficiaries of compensation acts more is needed than merely a well-trained, experienced surgeon or physician. The medical man must have a proper point of view. He must be conscientious and have a desire to do all that is possible for his patient. He must be so temperamentally constituted that he will be agreeable to the patient and the patient will have a feeling that he is receiving adequate service. A competent man, if he is not agreeable to the patient, or if he does not give the patient the impression of giving adequate service, will not answer the purpose. However, the sincere, competent surgeon almost without exception does impart this impression.

The question of satisfactory medical care for injury cases, then, would seem to resolve itself into ascertaining who the competent, well-trained surgeons, with the necessary temperamental qualifications are, and where located, and of placing the injury cases in so far as possible under their supervision and care.

The matter of hospitals gives little concern, for a good physician will give adequate service anywhere, and a physician unqualified by training or temperament will not give adequate service in the most

expensively constructed or lavishly equipped institution. Well-equipped hospitals, however, are a distinct advantage and make the work easier.

To secure the best possible results (and when dealing with the injuries of others the best possible results constitute the minimum of responsibility), advantage needs to be taken of the special training of special men; that is, of the so-called specialists. Eye injuries, wherever practicable, will be treated by trained ophthalmologists, and no physician or surgeon temperamentally qualified for the care or supervision of compensation cases would think of himself treating an eye injury if a competent ophthalmologist were at hand.

Bone and joint injuries will be cared for only by surgeons with training and experience in such injuries, or they will be under the care of competent and experienced orthopedic surgeons; and in this day X-ray control of such injuries is a necessity. Adequate X-ray control is an economy in bone injuries and in suspected bone injuries. The competent surgeon will insist upon it if available. One will no more be guilty of succumbing to the fallacy that all surgeons are equally competent to do all kinds of surgical work than one will succumb to the more general fallacy that every "doctor" is a competently trained and experienced physician.

How to bring about the desired results of securing the service of competent physicians and surgeons only is by no means a simple matter. The great and abiding faith of the average person in his family physician is not a thing easily set aside. It is one of the chief obstacles in the way of furnishing adequate and efficient treatment in compensation cases. This fidelity of the average individual is natural and the reasons for it are readily understood. A physician is the family physician usually because in his relation to the patient he has been agreeable. He has endeavored to show a sincerity and interest in his case. He has realized that his success depended upon his convincing his patients of his sincerity and interest and upon establishing in their minds a degree of confidence. With few exceptions, patients will not submit to treatment by physicians or surgeons who do not treat them in such a manner as to show human interest in the individual, as well as professional interest in the case. In so far, therefore, as the furnishing of proper treatment under the provisions of compensation acts is concerned, only those surgeons are generally usable who are temperamentally so constituted that they will show this human interest and impress favorably the beneficiaries.

The training, experience, and competency of the surgeon are qualifications which will be required by the responsible commission, because the commission knows their importance and necessity. The human interest and not unagreeable personality are attributes which

the injured person will insist upon, and it is perhaps proper that he should. He often does not understand the excellence of the medical treatment furnished. It is the personal relation which impresses him most.

The problem of the United States Employees' Compensation Commission in providing treatment has been somewhat different from the problem offered to the compensation commissions of the States. The beneficiaries of the Federal commission reside in all the States. Facilities for treatment, however, are not limited to the States in which the cases occur. The problem is in large part different from that of the commissions in the States with the more dense populations, where the trained medical men are relatively numerous and more widely distributed, and in which the distances to the medical facilities are not great, as they frequently are in the less populous States. On the other hand, if the beneficiary can be moved there is nothing to prevent his being sent from Texas to Chicago or from Florida to New York for treatment if need be.

The Federal compensation act provides for reasonable medical and surgical service to its beneficiaries. As only that medical and surgical service is reasonable which gives promise of being effective in bringing about restoration of the injured, the commission is under obligation to furnish competent and efficient service.

The Federal act also provides that the medical service shall be furnished for a reasonable time. A reasonable time or period over which treatment shall be extended is necessarily that period during which treatment is needed. Treatment for a lesser time or a greater time would be unreasonable.

The Federal law further provides that this reasonable medical and hospital service shall be furnished by United States medical officers and hospitals where practicable, but that where it is not practicable to use United States medical officers and hospitals the service shall be furnished by physicians and hospitals designated and paid by the commission. The commission has, in compliance with the provisions of the law, made use of United States medical officers and hospitals wherever they were in a position to furnish the necessary treatment. It has been able, particularly, to make use of the many hospitals and relief stations of the United States Public Health Service, this service having made its hospitals and dispensaries available to the beneficiaries of the commission wherever their facilities warranted and their use was practicable. The Medical Corps of the Army has maintained dispensaries for the treatment of beneficiaries of the compensation act at the arsenals and some of the supply depots of the War Department. The Surgeon General of the Navy has equipped and maintained dispensaries at the navy yards.

The employees of the Government, however, are at work in all parts of the country, from the Atlantic to the Pacific, and from the

Canadian to the Mexican boundary. In addition to the hundred thousand employees at the seat of Government in the District of Columbia there are the employees of the various executive departments throughout the country—the Customs Service and mints of the Treasury Department; the Immigration Service of the Department of Labor; the Forest Service, Weather Bureau, Bureau of Animal Industry, and other bureaus under the Agriculture Department; the Reclamation Service, Bureau of Mines, Coast and Geodetic Survey, and other offices of the Interior Department; the Engineer Corps engaged in river and harbor work; the arsenals of the War Department and the navy yards of the Navy Department (the arsenals and navy yards being large industrial establishments), and, finally, the many employees of the Post Office Department, with its post offices in every city and town and its thousands of rural letter carriers, making in all several hundreds of thousands of Federal employees.

Injury cases invariably require immediate treatment. Many injuries are slight, and sending the injured a distance for medical treatment would not be warranted. Many injuries are too serious to make transportation to a distance advisable. As the number and distribution of United States hospitals and dispensaries are limited, the commission has necessarily had to make extensive use of the provision of the law as regards the designation of physicians.

The policy has been followed of designating, particularly in localities where there are numbers of Government employees and in which there are no United States hospitals or dispensaries, or in which these facilities need to be supplemented, surgeons of ample training and experience, of mature age and of good reputation locally. The commission has made about 2,000 designations of this kind. The number will be added to as the commission is able to find men with the necessary professional and temperamental qualifications. In the meantime, in the localities in which there are no United States hospitals and in which designations have not been made, injured employees secure treatment from physicians of their own choice, and the commission will pay in these cases charges commensurate to the service rendered.

For a time, in many places, hospitals were designated and not physicians, believing that the hospital would represent a group of medical specialists and that of the cases sent to them those requiring the general surgeon would receive his services; those requiring the ophthalmologist, the dermatologist, or orthopedic surgeon, would receive their respective care, and that the necessary pathologic, bacteriologic, and röntgenologic services would be available. The commission early found, however, that cases sent to hospitals in this way frequently received scant and inadequate treatment. Often they

seemed to be placed under the care of an intern, or at times under the care of a practicing physician without particular qualifications. They did not often seem to come under the care of a responsible attending surgeon. The commission, therefore, discontinued this practice and is requiring that cases in other than Government hospitals shall be placed under the immediate care of a designated physician, where designations have been made.

Anything but the most efficient treatment is a serious drain upon the compensation fund, inasmuch as the commission has to pay part of their wages to the injured until they are restored and returned to work. The better the medical service, the less the compensation expense; also, the better the medical service, the less the loss to the employee.

The commission started out to furnish only ward service for its cases in hospitals, excepting in those instances in which private rooms were necessary for the proper treatment of the case. It has found, however, considerable difficulty in adhering strictly to this policy, as the wards in many hospitals do not furnish a standard of service to which the commission feels justified in submitting its beneficiaries.

As regards the responsibilities of the medical attendant, the commission has explained to its designated physicians that its chief desire is to secure adequate service for the injured; that where the service of a specialist is indicated such service should be obtained; that in bone or joint injuries or in suspected injuries of this kind, the commission expects adequate X-ray examination and control; that the service of neurologists, pathologists, or other specialists should be secured when necessary; that the purpose of the commission is to make the most satisfactory restoration of the injured in the quickest possible time.

The plan is working out very satisfactorily. Of course many injuries occur in out of the way places and under conditions where the employee has to be cared for by any physician who is available, and often the results are not what the commission would wish. It is difficult, however, to see how this can be prevented.

In conclusion, the experience of the Federal commission has been that the whole question of adequate medical service to its beneficiaries depends upon getting the injured employee under the care of a well-trained, competent surgeon, who will conscientiously do whatever is possible in the physical restoration of his patient. This secures the maximum of benefit to the injured at a minimum of cost to the Government.

The CHAIRMAN. I am advised that Dr. Geier is not present. Is there anyone here deputed to read his paper? [No response.]

## HOW CAN MEDICAL SERVICE BE IMPROVED?

BY OTTO P. GEIER, M. D., DIRECTOR EMPLOYEES' SERVICE DEPARTMENT, THE  
CINCINNATI MILLING MACHINE CO.

[This paper was submitted but not read.]

A large step in social justice was made when workmen's compensation acts were established in the several States, whereby injured workmen were cared for at the employers' expense, wherein the employee was partially compensated for his lost time, wherein definite sums were paid for permanent disabilities, and where loss of life at least brought some financial assistance to the family of the workman killed in industry.

The operation of workmen's compensation acts focused public attention upon the fearful economic loss from preventable accidents. Coincident therewith came that most beneficent of constructive effort—the safety-first movement.

Praiseworthy as have been the results of workmen's compensation acts, the field of constructive social effort in the broad direction of adequate surgical and medical service to those incapacitated by injury and occupational disease is relatively still untouched. The worker is entitled to more prompt attention, to better surgical and hospital care, and to more scientific rehabilitation than he is to-day receiving on the average. By this it is not meant to suggest that he is not entitled to more liberal compensation, but to insist that the other factors mentioned are more important to the man himself and to society at large.

Far too many cases of injury and occupational diseases are occurring, and until industrial accident commissions take a far wider viewpoint of their public trust; until they seize upon the fundamental program of the prevention of occupational disease and accident as a part of their obligations to the State; until they appreciate the absolute necessity of thoroughly supervising all of the surgical and hospital attention received by the worker, enormous unnecessary economic loss and suffering will occur. The annual meetings of the International Association of Industrial Accident Boards and Commissions have been most valuable as a clearing house for ideas and suggestions. The problems involved are of such immense scope and so varied in their legal and social status that the day may never come when the actual standardization of practices may be brought about; it might, in fact, be wasted effort to make such an attempt. The

time might be more successfully used in placing before these conferences certain ideals and general methods of procedure which can be made applicable under any system of workmen's compensation acts.

Much criticism, and justly so, has been directed at the contract physician and the inadequate service that he is rendering; much discussion has been held as to the right of the employer to choose the physician, rather than to have the employee given the right to choose his own physician. Either horn of the dilemma is necessarily incorrect, because no standards of surgical and medical skill have been set up which must be met by the physician, whether chosen by the employee or the employer. The medical department of each industrial commission must be given adequate funds, sufficient power and personnel, so that all of the work done for the commission may be carefully analyzed, to the end that incompetence will no longer be permitted to attend the industrially injured. Thus far the commissions have been too much concerned in the quantity of service rendered by the physician, rather than the quality. It stands to reason that until they know more about the quality an unnecessary quantity of service will be rendered followed by unnecessary charges.

It is a fair statement of facts that a very considerable portion of the energy and time of the officials of workmen's compensation acts is consumed in the nonproductive attempt to adjust the fees for physicians and hospitals. Too little critical attention is given to the type and quality of service rendered. Few, if any, of the commissions have an adequate medical and surgical staff that can cope with the many and diverse problems that are placed before them for adjudication. Rarely, if ever, is the medical director or his assistants known to visit industrial plants, wherein thousands of accidents are occurring annually. Only in disputable cases does this staff occasionally come in contact with the surgeon or physician who is rendering bills for his service. Because of this long-distance, utterly inadequate appraisal of the surgical field work, because of this entirely impersonal relation that exists between the surgical staff of the commission and the surgeon or physician who attends the worker, there has grown up a more or less cold-blooded comptometer method of arriving at a decision as to whether this bill or that bill for services rendered shall be allowed or shall be reduced.

Workmen's compensation acts are greater in their possibilities than they are in their present performance. The commissions, as well as the public, have failed to appreciate the great necessity of incorporating in the organization of industrial commissions an adequate executive medical staff of high scientific attainment. They have been "penny wise and pound foolish." They have failed to see that several hundred thousand dollars so expended would be returned to the State and to the employer five and ten fold each year

by shortening the period of disability, lessening the permanent disabilities, lessening the length of hospital care, reducing the time lost from work, and increasing thereby the production in factories, to say nothing of avoiding the unnecessary suffering that now prevails.

By some such organization only can we hope to eliminate the physician who is unfit to attend the injured, who should never be cared for except by the properly trained surgeon; and the properly trained surgeon can only be made always available if the proper surgical organization is set up by the commission. As things are to-day, a premium is almost set upon the securing of low-grade, cheap service by the employer or the insurance company. Rarely, if ever, does the employee, when he has his choice, seek a surgeon, but usually he turns to his family physician. For the average type of service that the average worker gets, the present compensation fees are adequate. By this same act, however, it has come about that the best surgical men are not seeking industrial work, and to that extent the worker is being denied the most complete restoration and rehabilitation after injury.

We have reached a period in our industrial era when the industrial commission, along with the medical profession, must realize that the practice of medicine, and particularly the practice of surgery, must be altered to meet the conditions of this industrial situation. The procedures of the commissions should be such as would encourage more men to train themselves for industrial surgical practice. Medical colleges must take into account that industrial surgery is a distinct specialty. For economic and social reasons, industrial surgical service must be concentrated in fewer hands. The voluntary movement on the part of the wide-awake employers for the installation of medical and surgical departments in industry should receive unbounded encouragement from the industrial commissions. Here again the industrial commission must know that the type of service rendered and the quality of men in charge of such departments is such as to assure the injured workers the most favorable opportunity for quick recovery. Physicians not trained for surgical work must be discouraged from caring for the injured.

Along with the establishment of a strong, highly intelligent medical directorship there will be developed district medical supervisors who may come closely and quickly in contact with the surgeons in the field attending the injured, and who may assist the employer as well as the employee in seeking only the best service of that kind.

Out of this close contact with the injured and the source of accident, and directly as a part of a really constructive program, a safety and health-first movement will be instituted that will do wonders in reducing accidents and occupational diseases. Only by some system

of this sort can we prevent the unnecessary expenditure of millions of dollars in every industrial State for compensation and disability.

The industrial commission is the framework upon which this broad program for social improvement can be built. It is to them that we must look for leadership. In cooperation with the medical profession they must seek legislative power where necessary, to take this higher ground which will prove not only more advantageous to the employee, but of great economic value to the employer and the State.

Mr. FRENCH. May I mention that Dr. Gibbons's paper has been printed and is available at the table outside this room. I should like to ask those present to obtain a copy of this paper, for the reason that Dr. Gibbons was the medical director of the California Industrial Accidental Commission for several years prior to entering the Federal service. He is a man of exceptional ability, and was in charge of Camp Pike in Arkansas, where a very large number of United States soldiers were quartered and returned from the front. He had a service there of 21 months, and in his paper he tells why he thinks (and I think his reasons are excellent) that medical attention given to injured men should be based very largely on the result of the experiences that have come to the medical and surgical profession as the result of treating the men; and he lays emphasis on the occupational therapy and other methods known to our medical friends for obtaining the much-desired result of restoring men quickly to industry, so that their powers of function may not be delayed or destroyed as the result of improper treatment.

## HOW CAN MEDICAL SERVICE BE IMPROVED?

BY MORTON R. GIBBONS, MEDICAL DIRECTOR INDUSTRIAL ACCIDENT COMMISSION,  
CALIFORNIA.

[This paper was submitted but not read.]

In accepting the commission to write the following paper the writer wishes it understood that he can not speak for all industrial accident boards and their problems. His opportunities for observation in this field have been markedly limited recently, by reason of 21 months' service in the Medical Corps of the United States Army. The following remarks apply to California and to some other jurisdictions with which he is familiar.

In discussing this subject there will be included in the term "medical service" all that has to do with the physical, mental, and moral well-being of the injured; from the time of injury until he is returned cured, to work, or receives a permanent disability rating.

There is no doubt that a medical service, which aims to include the functions implied in the paragraph next above, is effective.

The onus is not by any means wholly upon the medical profession, because many influences beyond its control come to bear. The correction, however, lies largely but secondarily with that profession. The primary duty and initiative lies with the industrial accident boards.

In order to discuss the subject with economy of time there will be referred to here, for the sake of argument, some defects in the system as now conducted. It must be understood that not all jurisdictions experience the same difficulties. Many of the defects here recorded will not apply to the experience of the listeners.

Right psychology is probably lacking more often than right surgery. Inefficient medical guidance is present more often than is poor surgery. However, poor surgery is too common.

Under the caption "Psychology and medicine" come the defects due to lack of unity of interests. There is great divergence of interest incident to the injection of the middleman, that is, the insurance carrier, into this scheme. There is too much business and too little sympathy and understanding. Any employer may be wholly in sympathy and have a laudable desire to care for the welfare of his injured employee, but the middleman, by his methods, with which you are all familiar, may prevent and block that interest

and solicitude, which might be of utmost value. Then there is delay in securing medical service. This often can not be helped, and in not many instances is it harmful except from a psychological standpoint. It must be borne in mind that the results in the United States Army, on the field, were obtained in spite of terrible, but unavoidable, delays.

Another point is that the surgeon works for some one other than the injured person; that is, he is paid by another, and this fact tends to create suspicion in the mind of the injured. The suspicion may not be justified, but it is a reality to be coped with nevertheless.

Frequently the representatives of insurance companies treat the injured as though he were disabled because of spite for the adjuster; every request or statement by the injured is combated. The injured employee is badgered, sometimes insulted; doubt is cast upon his veracity and he is constantly threatened with loss of compensation; his mind is filled with uncertainty at a time when he is particularly susceptible to shock to the nervous system.

Improper environment is another important factor. The solicitous friends, in misdirected kindness, give the idea that the injured is terribly hurt. He is made to feel abused and that his injury is worse than it actually is. His lodges serve the same purpose, and the unions likewise. In connection with this last feature—the lodges and unions—comes the question of incentive to get well, or the reverse. Sometimes the injured receives benefits which encourage him to invalidism. Red-blooded men are not susceptible to influence of this kind, but unfortunately we have all kinds to deal with.

In conjunction with the psychological and surgical features combined, there is also the purely surgical. This includes the lack of expert surgical attention. A degree in medicine and surgery is not enough qualification. To some employers and insurance companies the surgeon looks good in proportion to the smallness of the fee which he is willing to accept. On the contrary, no surgeon is too good. Is it not true that permanent disabilities cost far more than the best surgery? An average physician can count upon his fingers the men whom he would trust to operate upon his loved ones.

Poor surgery is not always attributable to poor surgeons. A fault of some most skillful surgeons is impatience. The recent Army experience has taught a telling lesson. Patient application of physiotherapy will often effect a practical cure where radical surgery would have destroyed all chances of anything but a makeshift.

For some reason or other, probably lack of information, possibly lack of interest created by lack of adequate compensation, surgeons have failed to follow up their work. The industrial accident surgeons have not been alone in this matter. Men in private practice have been guilty of very much the same thing; that is, the matter of

restoration of function after injury. This is a very important point, indeed, and it has been grossly neglected. The surgeon has contented himself largely with seeing the bones unite and the tissues heal in proper contour. In spite of the lessons of the textbook, he has allowed the function, to a large extent, to come of its own accord. He has not followed up his case in that particular, which is just as much a part of his work as the actual setting of an original fracture. Apparently, surgeons of the United States have been behind those of older countries in this matter. The last five years, however, have firmly established the system upon a basis which will prevent its ever again being ignored. The object lesson provided by our own Army and Navy should be taken to heart by every surgeon who attempts to do industrial accident surgery or any other kind of surgery. Surgeons of high attainment who ought to be thoroughly familiar with this thing, but who have not been in the Army, are still in the dark and somewhat resistant. The other day a case was presented for a permanent-disability rating. The man was an Italian with poor mental equipment. He had received a Colle's fracture in both arms. The rating asked was for 50 per cent disability with reference to both arms, and the request was made by a skillful surgeon who does much industrial accident work. It was discovered that this injured man had received no physiotherapy whatever. His employer was so advised, and he was also advised that no permanent-disability rating would be applicable until proper treatment had been exhibited. Two months later the man reappeared with remarkable restoration of function, yet he had developed it himself; he had had no physiotherapy. This simply illustrates the surprising fact that good surgeons fail in other legitimate functions than surgery.

The matter of fees was alluded to above. It is not so much the actual smallness of the fee which the surgeon receives as it is the constant pressure which is brought to bear upon him to keep fees down and to keep expense down, and the fear which he may entertain that his services will not be called for unless he does work economically from the standpoint of first cost. A surgeon can not, from the fees ordinarily offered, spend his time at physiotherapy. He can at best only direct the occupational therapy, the physiotherapy, and reeducation. These departments naturally come under the work of individuals skilled in and specializing in these matters.

Another lack, then, is that whole system of occupational therapy, physiotherapy, and reeducation alluded to above. Industrial injury practice now demands it. A conservative estimate will place the actual financial saving therefrom at from 25 to 50 per cent in the combined cost of medical service and compensation. One reason for this is that there are practically no traumatic neurosis cases when occupational therapy is exhibited. It is further accounted for by

the shortening of convalescence and the restoration of function while convalescence is going on. It must be realized that the longer convalescence is delayed and the longer restoration of function is delayed, the less complete restoration of function will be.

After this brief reference to the shortcomings of medical service, let us come now to the suggestion for correction. It will have been observed that running through the foregoing there is the charge of lack of understanding, lack of common interest, lack of willingness to assume the injured man's point of view, lack of willingness to incur expense, lack of foresight, and lack of knowledge of modern methods, in which the employers, the insurance companies, and surgeons unite.

The correction will come through education. It will probably be demonstrated to the employers and insurance companies by the industrial accident boards that to save function, although the cost is greater at the beginning, will be economy in the end. A few weeks ago a case was presented for permanent-disability rating. A rather harsh letter was written for the benefit of the insurance company, for the insurance company had exhibited no physiotherapy and no occupational therapy, and it was apparent that there was function present which needed only to be developed. The insurance company wished to know what was desired and what kind of treatment was to be expected. Proper directions were given. A few days ago the insurance adjuster reported 50 per cent improvement in function after two weeks' treatment, and acknowledged his great satisfaction and complete conversion. Such facts as these are rather elementary but serve to show that the smallest details are to be considered. It is by this method of proselyting, too, that those responsible for the injured workman will be taught the advantages and will not fear the increased initial expense.

The psychological question is also very important and must be considered and met. There must not be antagonism. There must be a feeling of security in the minds of the injured. There should be some system established to provide for reassuring the injured—as soon as practicable after his injury—regarding what is to become of his case and what he may expect in the matter of treatment, length of compensation, and restoration of function. He must be assured that his family will be taken care of, and that he is expected to comport himself in a certain manner. He must understand early what lines of discipline will be expected of him. The offer of cooperation should be made to him so that he can not mistake it. All suspicion should be removed from his mind. The education here must extend to his friends, and his associates, and his union. He must not feel that his injury bears upon him as a penalty, but must feel that he is going to get well, that people want him to get well, and

that a job awaits him in accordance with his capabilities when he does get well.

We must attribute the remarkable result obtained in the recovery from wounds of the United States Army in large measure to the unusual environment and to the anticipation most of the wounded feel.

The vast majority of wounded soldiers have looked toward discharge from the Army as their goal. There has been a veritable stampede in this respect, and, whether right or wrong, the wounded have shared in this and have looked upon the discharge as a prize for the accomplishment of recovery.

The United States Army provides that no soldier injured in line of duty shall be discharged until he has received all of the physical benefits that the Army can give him. The soldiers know this, and, with the burning desire for discharge within them, make every effort to restore function and secure release. Such a condition can not be simulated in the industrial field, but the illustration indicates what psychological value incentive to get well has. The football player injured at the beginning of a season is striving with might and main to get into the game again. He will submit to any kind of painful treatment that promises restoration. There is the psychology again.

Efforts can be made, at any rate, to avoid circumstances surrounding the injured workman which are the reverse of those of the soldier.

Next comes the selection of the surgeon, the hospital, and the others who treat the injured workmen under guidance of the surgeon. There have been two wonderful contributions to medical knowledge and efficiency in this country, virtually due to the war. These are the methods of Carrell and the use of Dakin's solution in the treatment of infected wounds, which have revolutionized surgery along these lines. The other is the system of occupational therapy, physiotherapy, and reeducation applied to the injured. The United States Army has at this time a tremendous staff of surgeons skilled in this latter work; of physical and occupational aid—young women mostly who went into the work through enthusiasm, who are willing to stay in it and to contribute the same enthusiasm; and of reeducation teachers.

In a short time all of this magnificent organization will have been dissolved. The writer has come into close contact with a hospital organized for the complete treatment of the wounded, and he has known the personnel. He knows that many of these individuals are available for industrial accident work.

For the reeducation work, physiotherapy, and the occupational therapy there is a required something more than the relation of patient and surgeon or pupil and teacher. There is injected a certain personal relationship—manifestation of personal interest and sympathy. As a matter of fact, the entire system requires a great deal of the personal element. Everyone is not mentally equipped, no

matter how competent, to carry on this work. From the highest to the lowest the individual should be picked according to adaptability and known qualifications. An easy way to secure a personnel would be to make a canvass of the surgeons who have returned from Government service and who have had general hospital or base hospital experience, and to enlist the services of certain selected individuals. They would know how to proceed to secure adequate occupational therapists, adequate surgical treatment, and adequate physiotherapy and reeducation. Remember, the Medical Department of the United States Army and Navy had full charge of installing, developing, and applying this system in their services. Since personality, interest, and genius help so much, this can not be a machine-made thing to be run by rule. A few years ago the writer had opportunity to visit, in England, a large hospital run substantially on the principles involved in occupational and physical therapy. The organization was wonderful, the results phenomenal; but it was a one-man organization. The one-man feature permeated the whole institution. That medical superintendent knew each one of his 250 different patients—the peculiarities of each. There were 250 different problems. Without that man or one with a comparable genius the place would have been a failure, and the scheme a failure.

So let the personnel be selected with the utmost care, for value and not for low surgical cost. It can be done; it will be worth the trouble.

It would be rather superfluous in this sketch to try to outline a plan which would be a panacea for all ills of the medical service. However, any plan should take into consideration the psychology of the injured workman and free his mind of apprehension. It should provide the proper environment and it should provide the proper surgical care; it should include the lately well-learned lessons of occupational therapy, physiotherapy, and reeducation; it should include a certain discipline to which the injured individuals should be subjected in order that they may not avoid the necessary treatment and environment.

The CHAIRMAN. Before I read my own paper there are one or two things to which I desire to call your attention in the hope that they will elicit some discussion.

The first point I want to bring out is that of an adequate fee scale in order to get competent surgical care for injured workmen. I have suggested the zone idea of a fee scale—i. e., the grouping of one, two, or more States that are close together and have some of the work overlapping.

The States of Oregon and Washington recently adopted a fee scale that will be uniform in the two States, and in adopting this scale they called in representatives of the State medical association to confer with them. Thus we hope to eliminate the difficulty ex-

perienced in securing the best surgical service, because the busy, competent surgeon does not care to devote time to State cases for which he is poorly paid.

When we went to consider changing the fee scale in Oregon we had a fee schedule that had been operating for five years. Dr. Mowell, of Washington, was ashamed of us. When we considered raising it we received the fee schedule that was operative in other States; and truly our schedule looked pretty good, but it did look bad when compared with the Washington schedule; and we have now adopted a new schedule in the two States, and it is a schedule that would not cause one to blush and feel humiliated when asking a good competent man to take a compensation case. Personally I feel the low-fee schedule encourages inferior work, and therefore disabilities and undue expenditure of the fund.

One other feature of the agreement we have made—and we are going to carry it out if we can—is giving the power under the law of seeing that an injured employee is placed in the hands of a competent man, and not allow any open bone work, such as grafting, wiring, and so forth, to be done unless it is first of all taken up with the commission and permission granted; and they are not going to grant that permission to any except it be a competent man to do that particular type of work.

To illustrate the necessity for this, in Oregon one physician handled two cases (that came to my attention after the arm was ruined) of simple fracture of both bones of the forearm, and attempted to follow out Lane's technique and used some Lane plates where there was no reason for so doing, with the result that infection and non-union, with the attendant ill results, occurred. That man is not going to do any more bone work for the Oregon commission until he proves himself competent. Another thing is that we are going to insist on all eye cases being handled by an eye specialist. There will be some cases where the commission will have to use its own discretion, and in outlying districts in the cases of lesser severity, possibly not hold ironclad to that rule.

We are also interested in the work of reconstruction and the re-education of the injured workman. Personally, I believe it does not matter if it does cost considerable if it will restore or partially restore the function to the man and make him a contented and useful citizen and help to solve the social economic problem.

One other question with regard to X-ray. We have made a ruling that in cases of fracture it is all right to X-ray that fracture previous to reduction, but we require within 10 days following the reduction or attempted reduction of that fracture there must be another radiograph made and filed promptly with the commission. If the radiograph is not received until two months after the attempted reduction it is of little value—the disability is not detected in time.

## HOW CAN MEDICAL SERVICE BE IMPROVED?

BY F. H. THOMPSON, M. D., MEDICAL DIRECTOR OREGON STATE INDUSTRIAL ACCIDENT COMMISSION.

In presenting this brief paper, I realize there is a wide variation in the compensation laws of various States, and I speak especially in regard to the Oregon law and similar laws.

A problem of every industrial board that has a medical-aid provision is the securing of competent and efficient service to injured workmen. This is a paramount issue. The next in importance is the obtaining of such expert service at such cost as is commensurate with the ability and time rendered, and yet hold to the minimum that insures the fund's solvency without abnormally high rating of hazardous work.

This problem, sooner or later, must be solved. It predicates a clear and harmonious understanding between the surgical profession and the industrial board, without which there can be no successful administration of a medical-aid provision. It likewise necessitates placing in the board rather broad power—power to make and enforce certain rules; i. e., to apply them to particular conditions that may from time to time prevail in that jurisdiction.

It is my belief that the first movement to better service is a standard fee bill for certain zones, the zones to include one or more States. This zoning idea is held because of the wide variation of fees in certain groups of States, with the overlapping of work in adjoining States. The fee scale should be a minimum scale that would be charged a workingman in his respective community. Good surgical service can not be had for less; and there is no valid reason why it should be asked for at a less fee than the minimum. But it must be borne in mind by each medical examiner that, where a minimum fee is allowed, close scrutiny of reports is essential to avoid the padding of bills by certain unscrupulous members of the profession that would make the scale in reality far exceed the minimum. Many of our ill clinical results, or lack of good surgical result, is due primarily to the fact that the fee bill has been so low that the busy, capable, competent surgeon could ill afford to divert his attention from private work to care for industrial cases. This has of necessity given to the inferior practitioner a multitude of most serious cases, and he has not been sufficiently skilled to meet the situation. To secure a clear and harmonious relationship between the medi-

cal profession and the board this scale should be chosen by representatives from the State medical society and the board. In Oregon and Washington we have, in joint session with the State medical society, adopted not only a liberal fee bill, but also certain rules that we hope will eliminate many of our present difficulties.

A complete, original report, with clear follow-up reports, should be required of every surgeon. Too often incomplete reports allow an injured man to suffer a permanent partial disability that could have been avoided if the medical department had had full knowledge of the case earlier, and placed the man in proper and competent hands. This is especially true in rural districts where bone injuries are most frequently improperly cared for. This suggests the necessity of a sufficient number of claim investigators who can render invaluable service by personal work among claimants and physicians—can often save friction, and, more important, can report in cases of severity that are not in competent hands for the particular type of case in question. In this connection one of the powers of the board should be to refuse to recognize or pay for service from any surgeon who will not cooperate—or who ruthlessly operates. A very important rule of the board should be to require that no open bone work, such as grafting, wiring, pegging, etc., be done unless first taken up with and authorized by the board. This, with the power of the board to remove an injured workman from the care of one surgeon and place him under the care of another, will surely decrease the number of men that are surgical cripples rather than industrial cripples. Likewise, every eye and ear case should be treated by an eye and ear specialist. Some discretionary power would here have to be exercised by the board on account of embedded foreign body cases in outlying communities, without reasonable access to the specialists.

In Oregon and Washington the compensation commissions expect to handle these cases in this manner. The physician from whom a case is taken will be paid for his services according to the fee schedule, and the specialist, under whose care the commission placed the man, will be paid according to agreement. The immediate cost may be large; the ultimate saving in shortened time, loss, and conservation of function will be great.

In Oregon two men were unfortunate in suffering fracture of both bones of the forearm, but they were still more unfortunate in residing in a community where resided an unskilled but ambitious young surgeon. He had heard of a Lane plate, but evidently did not know how and when to use it. As a result he entirely ruined the arm of one man and had the other one's arm practically ruined, when the man was found by the commission and function partially restored by

a competent bone surgeon. Under our provision that young man will do no more bone work for commission cases unless he learns how.

There is one class of cases that we find are best treated by the orthopedist—namely, sacro-iliac strain. These are fairly frequent, slow of recovery unless rightly handled, and too often aggravated by chiropractors or neglected by the general practitioner. In Oregon even chiros are licensed. I am not proud of that. I firmly believe that since these are accident cases, the commission should be empowered to recognize only surgeons as competent to treat such cases.

Competent specialists should be carefully selected in the larger communities, to whom men may be sent for special examinations; among these should be at least one neurologist. He it is who can best detect a beginning post-syphilitic condition or incipient insanity that is coincident with, but not the result of, an injury by industrial accident. He, too, may recognize the various types of nervous or mental condition, such as hysteria, psychasthenia-dementia in its several forms, malingering, etc., giving prognosis and direction as to the type of treatment. I may say here that I believe there should be some proper place within reach of the commission for isolation and proper care of nervous mental cases.

Medical service would be improved if closer attention be paid to reconstruction work by selected surgeons. While the leading consideration is restoration to earning capacity, rather than cost in a given case, \$300 or \$500 judiciously devoted to reconstruction may easily save to the board a life pension, and return the injured workman to a life of usefulness. This type of work should be done as early as possible, and I would suggest that all temporary total disability cases extending over two or three months, unless the severity of the injury would easily account for the same, should be examined and cared for accordingly.

Accident prevention, reconstruction, and reeducation are a trio of greatest importance. Reconstruction and reeducation of war casualties is a social, economic, and humanitarian problem recognized by every great country in the recent great world conflict. The industrial cripple is exactly the same problem with exactly the same bearing on social economics, and presents the same humanitarian aspect, and the number far exceeds those of war heroes. It is not money the man most desires—it is earning capacity, for with this reestablished his problem is solved. Contentment is realized only by those who work.

No medical aid fund should have a limitation to the extent to which it may go if restoration partially or completely can be had. The matter of reeducation should be concomitant with that of reconstruction. In other words, the molding of the mental attitude and the instilling or the cultivating of the determination to do, should begin at the bedside. I long to see the day—and believe I shall see it—

when every industrial board will do this work that is so filled with human interest and so important that it is next to sacred. The time has passed when we can speak of injured men in terms of money; it must be in terms of humanity. Medical service should not stop short of the best. A man with one hand or one leg has no business at alms on the street, discontented, an object of pity, a social burden.

Mr. Shunk, a case of California, is a living example and magnificent inspiration to anyone of what can be accomplished by reeducation. He can run a lathe, crank an auto, drive an auto, dress right, do any of these common things that the ordinary man can do—and this without either hand.

One other thing that seems essential to the betterment of medical service is the occasional meeting of the county and State medical societies and the presentation of papers that deal with the problems arising between the surgeons and the board, actually illustrating by stereo the good and bad results in certain injury types, and thus the necessity of certain board rulings and actions. The board should be clear and firm in all of its rulings, and there should be a proper acknowledgment of all questions or communications from the surgeons.

One other suggestion is to require the filing early with the board of all X-ray plates and the prompt reading of same by the medical examiner, in order that errors in care of the injured may be detected in time to prevent permanent partial disability that could be avoided. An X-ray of reduced fracture causing permanent partial disability, if not seen until two months after the injury, is useless. We require X-ray 10 days after reduction, with the prompt filing of same.

One elimination is essential. Do away with the hospital contract system that too frequently renders poor services, overcharges the workman, and is not morally right, as every man should have the God-given right to be treated by a surgeon of his own choosing. The man may choose poorly, but ordinarily not. Furthermore, he will be contented, and if results are not soon forthcoming the commission can then justly aid him in a further selection. I am speaking now of the ordinary case of injury.

The first law of nature is self-preservation. The first law of democracy is the establishment of certain personal privileges or rights. Why then should this right be excluded? There is only one answer, and it is fallaciously founded and mercenary. I will be broad enough to admit that some hospital contract association cases are well cared for, but I must contend that the majority are not. The money made by the hospital association would better be added to the present, too meager, compensation to the injured. The only condition that would justify the contract system is in some remote camp. But some method can be devised to cover these few instances and thus pre-

vent the few from forcing upon the many a principle that is basically wrong.

To summarize: First, pay a better fee for skilled service and thus secure the best possible service.

Second, give the industrial board broader power to regulate services and to make certain rules and to enforce them.

Third, a clearer understanding between the medical profession and the industrial board by way of industrial programs at medical meetings.

Fourth, encourage reconstruction of injured workmen and through investigation, etc., place the man in competent hands as early as possible.

Fifth, eliminate the pernicious contract system.

This very brief paper is sincere, but is presented with the idea of eliciting criticism in order to provoke a wholesome discussion that will be of mutual benefit.

The meeting is now open for discussion.

#### DISCUSSION.

Dr. DONOGHUE. I want to say that Dr. Trask has justified all I have had in mind about the United States Public Health Service taking over the control of accidents in the various States, and he has said something when he says a man on salary does not produce results.

Dr. LEWY. I would like to say a few words about the remarks of Dr. Trask. A very able teacher was asked once how many able physicians would be in his graduating class and he said, "I expect 2 professors out of 100 men, and the others will make a living."

I believe the analogy (in spite of the fact that I concur with Dr. Trask as to the training of physicians) of the human body to an automobile, and the analogy between the training of a physician and a mechanic to be incompatible. The most serious defect in an automobile, which is only a static machine, can be removed by a new part if the very worst should occur; but I would like to know who can replace a piece of liver or replace the important parts of the body generally. It takes a far abler physician and surgeon to know what he can not do than the one who first has to do it. The able surgeon who is a diagnostician will very often say, "I can not do this. It is beyond repair." That does not make him a bad surgeon or indicate that he can not do enough. He can not do it because we do not know any more. We are dealing with a human body, which is a very complicated machine. I concur that a good many men are ill-trained, badly trained, partially in their college curriculum, partially in their training as they enter their profession for practice;

but I do not think it is as bad as Dr. Trask seems to indicate, and I have often stated it would not do any of us any harm if we all knew a little more.

I was much impressed with Dr. Donoghue's paper. I believe it contained the résumé of a good many useful things which every one of us sees. He cited trauma. May I add "obsession." We all enter this world with certain defects, some visible deformities and others invisible during life. An individual predisposed to a neurotic temperament will have a lesser resisting point to a very slight injury (such injury need not be an injury of external force) than the normal one.

That brings us to the study of individuality, and in using the term "individuality" we must consider the term of "vocational accident." I recall in Seattle the very first sentence that came to me was the definition of a vocational accident. A vocational accident is an injury to an individual appertaining to his special vocation, so that a man who has an infection of a finger with a permanent ankylosis, if he is a shoveler or uses a pick, can continue in his vocation; while if the same injury occurs to a watchmaker or fine mechanic his loss of that finger may be equal to a complete loss of the use of the hand. I think it is very difficult to administer the law under a system of uniform rules, and to say that a certain permanent irreparable defect of a body part is equivalent to the loss of a fraction of that part comparative to the whole of the body. So we proceeded in a most comparative way, stating that the ankylosis of the distal phalanges is equivalent to the loss of the part of the hand, etc.; and that ankylosis of a finger is equivalent to the loss of the use of the entire finger, although not amputated. Dr. Donoghue used the term "ergo," and "volitional index."

Dr. DONOGHUE. Measurable will power.

Dr. LEWY. By a certain judge?

Dr. DONOGHUE. Yes.

Dr. LEWY. It is a very funny term. A man was asked to touch his left ear, and he did it like this (passing left hand in front of face and around the back of the head to the left ear), and when asked why he did it that way, said, "Any fool can do it the other way. I do it that way to make it harder." If I have to accuse my fellow colleagues of anything, it is for the terms they have created, and which indicate a lack of knowledge of a good many things. What does that mean? Imagine creating an instrument or an index on the individual's volitional power. Why, gentlemen, you know very well that two able, highly trained men can put their hands on the same abdomen, and one will say, "I find an enlargement between the liver and the stomach," and the other fellow pokes his hand in and says, "I don't," and another man will come in and say, "What is the use

of arguing? Let us open him up and find out what it is." I can understand two trained men listening to a patient, and one saying, "He has asthma," and the other saying, "Perhaps it is the beginning of incipient tuberculosis," but I can not understand why two able pathologists, equipped with exact mathematical instruments, make mistakes. Yet Dr. Donoghue says he has an index of volitional power, an index of what is going on in a man's mind. It shows you the ridiculous side of it, and if this was a medical committee I would use another term, but I am scared to do so here.

A VOICE. Go ahead.

Dr. LEWY. However, the most difficult field in the entire administration of compensation as it relates to the advice of a medical man embraces three defects. The first is the eye defect. It is very difficult to state what was the comparative eyesight antedating the injury.

Secondly, is the defect which he finds entirely due to the injury?

Thirdly, what is the exact degree of defect? Those are the greatest difficulties in the administration of the compensation law.

Take the so-called functional nervous disturbance. You examine a man and find absolutely no organic nerve lesion, and still the man says, "I have been working all my life up to now. Since this injury occurred (which is only a scalp wound) I have dizziness and can not eat nor sleep, and when I work I get easily tired. Look at me. I am losing weight (and he weighed 180 pounds at least), and am not well." He has created in his mind an obsession. I wish to go on record right here as saying there is no medical man, no matter how able he may be, if this individual made up his mind he has headaches and vertigo and has lost weight all due to that scalp wound, that will convince him to the contrary. He has in his mind one thing, and that is settlement.

In an article I wrote on functional neurosis I stated: "I do not know the pathology of the disease which can be exterminated by a pecuniary settlement." However that may be, it exists, though I can not define it; but a good many medico-legal experts write in medical books: "Settle this case, and satisfy the man's mind, and he will be well."

One thing that has been mentioned in Dr. Donoghue's paper I would like to refer to. Unfortunately in the last year I have seen very serious nerve conditions among men who were apparently well. That means they gave no history of a syphilitic or other infection and came from an apparently healthy family. They worked, and their employers approved their work, and their fellow beings with whom they associated did not recall that they had ever acted abnormally, and there were no visible defects until the injury occurred, and the injury was comparatively slight; and a few weeks after the case was disposed of the man wandered away from his

home, and was found in some insane asylum in a hopeless condition of paresis. Now, gentlemen, can an injury be a contributing factor to that? Absolutely. Take a man who had a syphilitic infection 20 or 30 years ago and showed no evidence of it. What would be the evidence? Instead of putting on a clean collar he put on a dirty one. That from a good-natured man he became excited. A man like that is injured, and he has not the resisting power the healthy man has, and the first thing that occurs to him is the obsession that he will not get well. The obsession simply means the retention of something in his intercranial content which he can not throw off. The normal human being does not get an obsession. The sick man can not separate himself from the event, and that is what we call an obsession, and that obsession comes to the individual because he has a lowered vitality in that part. Whether that lowered vitality is purely organically syphilitic, or started early in life with a so-called predisposed lowered neurotic temperament does not make any difference. It is the injury which is the contributing factor and must be compensated.

Mr. KINGSTON. I am glad to notice that Dr. Marlow, president of the Ontario Medical Association, has entered the room, and I would like to ask him to extend a welcome to the visiting doctors. He is the official representative here of the doctors of this Province.

Dr. MARLOW. I regret that owing to a prior engagement I was unable to be here this afternoon, and so I have been deprived of the privilege of listening to the papers that have been read, but I have enjoyed the discussion to which I have listened during the past three-quarters of an hour or so.

On behalf of the Ontario Medical Association I wish to extend greetings to the visiting members of the medical profession from elsewhere, and I may say I regret very much that the executive body of the Ontario Medical Association's local branch—which is the Academy of Medicine of Toronto—was not informed of the likelihood of a visit by these gentlemen to Toronto, thus preventing us from taking part in the entertainment which is being provided for you. I wish to convey the best wishes of the Ontario Medical Association, and to hope that success will attend all your efforts.

So far as your work is concerned, it would be, particularly at this late hour, improper for me to take up any of your time; but I may say that a great many points came up during the short discussion I heard which were of great interest, and I do think that discussions of this kind can not fail to produce a better relationship between the medical profession and that part of the public represented by your commissions.

It is perhaps difficult for the layman to understand the viewpoint of the medical man, but I confess it is equally difficult at times for

the medical man to understand the viewpoint of the layman, and I regret to say it has been our experience here that where vast medical problems have been concerned they have been too often relegated to the laymen, and the laymen have been much too late in seeking medical advice.

The military hospitals commission here was one of the greatest humbugs ever wished on this country. It was composed entirely of laymen to deal with the biggest medical problems the country had ever been up against, but if I were to dilate on that subject I am afraid I would keep you a very long time.

I regard the work done by your boards and commissions as a most important phase of State medicine, and personally I hope this work will be extended. You are dealing with the industrial end of it, but there are still large problems to be dealt with, and that problem is left to the medical profession, and I regret to say that the public in general do not understand that. You have grasped the idea so far as workmen are concerned. That is to say, while a workman is suffering from injury or disease through accident you are relieving him from financial stress, and therefore facilitating his recovery. You provide the best medical service available, and thereby reduce his disability. That has a vast influence in determining the rapidity with which a man may recover. In the early stages of the war a great many men were accepted by the medical officers who perhaps had been subjects of tuberculosis. The disease was quiescent at the time; perhaps some had been in a sanitarium.

There was a very great deal of talk about it. The medical profession was criticized severely for passing these men, but in doing this I believe the medical profession rendered the country the greatest service that ever was rendered. Personally, I should have been glad to see every tubercular subject made a charge upon the country, because the country would be doing a vast service not only to these men themselves, but to the country at large.

There is another great problem which the medical profession is still trying to solve in connection with our hospitals. The hospital provides the building, and the patient who is able to pay his way in the public ward may pay it at the rate of \$1.25 per day; and if he is unable to pay for it he gets it free on the certificate of the physician, and the physician must certify he is not paying for his treatment. That is to say, a great many go into these hospitals at no expense to themselves or to the public, and the load is being carried by the medical profession.

In respect to the industrial problem, it is being relieved by you; but there is another great problem in providing the large medical service required for those who are unable to do it for themselves.

With regard to the remarks of one speaker here, if I were not a visitor I am afraid I should be inclined to criticize him very severely. I quite agree that the simile drawn between the body machine and the automobile is not, as Dr. Lewy contends, an apt one. We can not get away from the human element, and the man who gets away from the human element is not a proper medical man for your boards to employ. He must have the human element constantly in view. I do agree, however, that a great deal of your work must be done by specialists. But I certainly have not the same opinion of the medical profession as that speaker professed to have. I take it that the majority of the medical profession are a body of well-trained men; but the subject is so large and the specialties are so varied and the requirements of the specialties are so many that there is a great field for specialists. The ordinary general practitioner, however, is just as much needed, and there is a great field for him. If I had the same opinion of the medical profession of Ontario as that speaker expressed of the medical profession to which he referred, I would be very much inclined to leave that profession.

There is no doubt that you require good service, and if you are going to get the best service you must look for it and pay for it adequately.

Dr. TRASK. I see there is one point in which I did not make my intent clear, but that point has been brought out very emphatically by the discussion.

My simile between the automobile and the body machine was intended to imply, "If you would do this much for an automobile, how much more would you do for a human being." That point, of course, has been brought out by Dr. Lewy and the previous speakers.

In regard to the ability of the medical profession, I did not make my remarks in a spirit of criticism. I do not believe that the medical profession is any worse than it could be expected to be. I do not believe the fault is in the medical profession. I believe the medical profession has attracted to it a group of individuals who are above the average, appreciably above the average of mankind in general. I know that the medical laws of Ontario are very good, and that the requirements in regard to qualification are unusually so, and that in Ontario you have an unusually well-equipped group of medical men. I know that in the United States over much of the territory the medical requirements are not good now, and never have been. I do know, and it is a matter of record published by the American Medical Association, that a great number of medical schools in the United States up until recently have been almost fake schools. I do know that there are all over the country practitioners who, when they get a fracture of the leg, seldom achieve good results in their treatment thereof, not because they would not if they could, and not because

they do not do the best they can, but because they do not know how. The Federal Compensation Commission and other commissions have seen fracture cases which were permanently cripples because the medical man who had the supervision of their cases did not know as much as we all know he should, and that these cases, had they been placed in the care of good general or orthopedic surgeons, would have turned out very satisfactorily. The commission sees those cases every day. There is nothing more sad than to see an honest, well-meaning man, who has received an injury which was not a serious injury, made into a permanent cripple because of incompetency.

I am not criticizing the medical men as such, but I am criticizing the attitude of the public toward the medical man.

The CHAIRMAN. Gentlemen, our time has expired, but I think we should give Dr. Trebilcock a moment or two with his paper if he so desires.

Dr. TREBILCOCK. I have not another word to say.

Dr. MEEKER. It is very evident that we could sit two weeks and listen to the discussion of the medical subjects set before us with great profit. I want to suggest to the executive committee that next year we arrange for a specialized medical program, and that we take up some single topic, such as eye injuries or infections of the upper extremities and discuss it until we can arrive at some definite conclusion. Perhaps one of the sessions should be allotted to Dr. Lewy. I merely make the suggestion. Perhaps the other sessions could be devoted to tearing Dr. Lewy to pieces.

Nine and three-quarter hours from this moment you will be taken in swiftly moving automobiles and whirled into an elysium prepared by Mr. Kingston. I have every confidence in anything Mr. Kingston prepares. We are going to lunch at a golf club and then have a session at the said golf club. Mr. Kingston is a golf fiend, as are other members of this convention, so I am afraid our session may be rather perfunctory. In the evening there is to be a banquet—

Mr. KINGSTON. A dinner.

Dr. MEEKER. Oh, no; it is a banquet.

I want to call attention to the sessions on Friday morning at the offices of the Ontario commission. If there are any here who have not registered please go out and register just as soon as you can. We want to secure the names of everyone in attendance, whether as a visitor or a delegate.

**THURSDAY, SEPTEMBER 25—MORNING SESSION.**

**MEDICAL SESSION (Concluded).**

[On Thursday morning the convention made a motor tour of the city, visiting the Shields Emergency Hospital (i. e., the casualty department, Toronto General Hospital) and the Dominion Orthopedic Hospital. After inspecting the Shields Emergency Hospital, Dr. N. A. Powell gave the following short address on fractures.]

## FRACTURES.

BY DR. N. A. POWELL.

The particular fracture which has been in the courts more than any other is known by the name of Colles', and has been a misnomer for 100 years, at least since 1812. It is distinguished as a fracture  $1\frac{1}{2}$  inches above the wrist joint. They don't have so many of those in the courts now. Shakespeare said: "A broken bone once repaired grows stronger after the break." It is bigger, but it isn't so strong. In this talk I will endeavor to tell you the way the Colles' fracture occurs, the method of dealing with it, and the results of treatment. The facts on which I will base my statements are gained from treating 100 to 150 such fractures which occur in the emergency service each year. We have had that number for seven years, and so far we have not had an unsatisfactory result.

It is a very unsatisfactory fracture in its ultimate results in a large number of cases, for a certain definite reason. Here [illustrating by means of X-ray transparencies and by the use of a blackboard] is a normal wrist joint. You will see the large expanded radius and the ulna, and at right angles with the radius is the scaphoid. The keynote of the injury is the bone itself, and the ligaments attached to the bone and within, which you can not feel, and X-ray pictures don't show them to us. The real essential feature of these injuries is something which is not shown by artificial means or by X-ray examination.

The ordinary way this fracture occurs is from a slip and a fall. The hand is extended, and as it is carried to the ground the hand is thrown into extreme extension, and the force travels upwards and reaches the radius. Now there are small ligaments on the back of the hand, which don't cut any figure; but there are strong ligaments in front, and it is these which are the keynote of the whole situation. They are stronger than the bone. The bone is an open structure, and where that joins the hard structure of the face of the joint is the weak spot. Those ligaments not giving, the bone breaks within one-half to 1 inch from the joint. That is a typical fracture. The force continuing—you will see it here [illustrating]—the top of the ulna is broken off and this joint is displaced, and it is thrown toward the thumb side.

If the essential element is recognized, if we recognize that these ligaments tend to pull off the lower process, and if we reduce the frac-

ture perfectly, the result will always be satisfactory. There may be a little undue prominence on the under side of the hand. That is the only change, which is objectionable by being somewhat unsightly; but every other change will be repaired perfectly if the reduction is made perfectly.

Five years ago we were getting, through the influence of Henry Ford, of Detroit, a large number of fractures, which were chauffeur fractures, and they are of two types. The present car is cranked with your foot, but when we used to do it by hand the mistake was made. The crank should always be taken in the left hand and the thumb kept on the same side as the fingers. Here are chauffeur fractures [illustrating]. Here is a typical one [illustrating] where the man had his thumb around the handle and the force came upon it and the ligament dragged off this corner. If the handle spins around and strikes the wrist about 2 inches above the wrist joint you get a fracture of a little different type.

Now, what about reduction? The Colles' fracture, so called, should always be reduced under an anesthetic. From three to five seconds is ample for the reduction of most Colles' fractures. The keynote of the injury is that this bone, breaking in this position, gives you a surface like this, which is hard and the fragment is turned up and put like that. The hard bone is driven into the soft bone. It goes down like that, and you will not reduce that, you will not have a satisfactory result, unless you unlock and completely reduce that dislocation. That is all there is in it, and that is where the error occurs nine times out of ten.

The way in which it is done is to flex the arm to right angles and get some person to hold it there; and it takes a strong person. Take hold as if you are going to shake hands—just as if you were friends. You put your thumb upon the lower fragment, the one that closes up there. Now then comes the mistake. Ordinarily a straight pull is given and it is flexed. Exaggerate the flexion and unlock the dislocation and reduce the fracture, and it doesn't much matter what happens afterwards.

There are certain peculiarities. In a certain number of cases the taking off of the lower extremity of the ulna will give you a displacement of that bone. Sometimes it becomes entangled with a certain tendon. You have to remember that, and remember that this little piece dragged off, this little end of the ulna, will give you trouble. You carry it over like this [illustrating]. The ideal position is the position of the mailed fist we have heard of from Germany.

There have been about 100 different kinds of splints used. Here is the old Quaker splint that comes from Philadelphia. It does not fit the wrist, but if you pad it properly you can get fairly good results. Here is Robert Liston's splint, and also that of my old friend,

Dr. Frank H. Hamilton, of New York. The idea was to make the patient fit the splint, whereas it is proper to make the splint fit the patient at the time. The fingers should always be closed.

This [picking up another exhibit] is a little better. It is overdone, that is all. This will not fit everybody. It is cut out of molded material, and it is approximately correct, although it overcorrects the deformity. We don't use any ready-made splint, but we use this [holding up another exhibit], which is made every day or two in the emergency hospital. It is simply made by running to and fro a piece of gauze covered with flannel and rolled up at the end to form a thumb piece. I want it to go up to the middle of the hand and fit the curve of the radius, and I want to be sure that there will be no pressure forcing the ulna forward. You may think that a normal individual can be fitted by a normal splint, but there are some people so peculiarly shaped that only an umbrella and a handkerchief will fit them.

What should be the subsequent treatment? It is better that an X-ray picture should be taken. They are taken in a few minutes, and they show us the real injury, and they show us if we have succeeded in overcoming the difficulty. The patient should be seen every day for the first three or four days, and every second day after that, and the splints always removed. All splints should be off in three weeks. To keep a healing Colles' fracture in splints for as long as five weeks means a stiff hand for three months. You should get off the back splint in two weeks and the front splint in three weeks.

A few years ago it was claimed that a long bone when fractured should be followed by perfect repair, and it was an absolutely erroneous doctrine. These two [illustrating] will unite and the callous will form on top and bottom and between; but the important element is that in the process of uniting, these return to the embryonic condition. Those soften, and as they do so there is shortening. Dr. Hamilton formulated this for the American Medical Association: Fractures of the long bones of the human body are followed by shrinking—as a natural result—and this must be expected. To expect perfect results is a mistake. The bones have got to come together and knit, and then this callousness disappears. In this particular break it does not matter. It would be most noticeable if there were half an inch off the nose, but in the wrist or either of the lower limbs it does not matter.

Mr. KINGSTON. I am sure I express the appreciation of everyone here when I thank Dr. Powell for his explanation of this difficult problem with which we all have to deal.

Dr. POWELL. I feel that 20 minutes was not long enough to do justice to the subject. I am usually used to twice that long, and a person gets a proper chance to amplify the address.

**THURSDAY, SEPTEMBER 25—AFTERNOON SESSION.**

**CHAIRMAN, E. S. H. WINN, WORKMEN'S COMPENSATION BOARD OF BRITISH COLUMBIA.**

Mr. KINGSTON. In preparing the program for this convention I thought it would be a nice diversion instead of sitting through the four days in the one convention room if we could get out into the country a bit, so I naturally thought of one of my favorite spots on earth, the Scarboro Golf Club, and the officials of the club upon my suggesting the matter to them very willingly placed the facilities of the club at my disposal.

Two problems presented themselves in this connection: One was how to get the delegates around town on the forenoon's program, then down here in time for luncheon; the other was to provide the luncheon itself.

The first problem was easily solved. I imposed on a few friends I still have (may not have any after this convention is over), who very willingly took the day off and joined the party with their motors. We are very much indebted to these gentlemen—Mr. Gibson, Mr. Rutherford, Mr. Kingsley, Mr. Harris, Mr. McGregor, and Dr. Trebilcock—who are here with us, and also to Mr. Scythes, Mr. Kilgour, Mr. Harding, and Mr. Gough, who, while not able to come themselves, sent their cars to help along the party. On behalf of the delegates I desire to express to these gentlemen our most sincere thanks.

The other problem was just about as easily settled. When at the Madison convention a year ago I invited the convention to Toronto this year I did so with the cordial backing of the mayor and council of the city. So when, in anticipation of the convention, a month or two ago I called on the board of control for a little help in entertaining the convention, there was a very ready response; and to the city authorities we are indebted for this little spread which after our morning drive we have all enjoyed so much.

On behalf of the convention again I wish to say how much we appreciate what the city has thus done to add to the pleasure of the day's program.

I am glad to say we have with us Mayor Church, who has been elected mayor of Toronto for five consecutive years, and Controller Maguire; also our ever-busy prince of official entertainers, Assistant City Clerk James Somers. Toronto is governed by an executive body

called the board of control, consisting of a mayor and four controllers, and a council of 28 aldermen. We very much appreciate these gentlemen joining with us in this luncheon, and as Mayor Church, Controller Maguire, and Mr. Somers are anxious to get away to a meeting at Whitby, 20 miles east of this city, at 3 o'clock to-day (they are due in 20 minutes) we will have them speak 10 minutes, and that will give them 10 minutes to get to Whitby.

Mayor CHURCH. I would suggest, first of all, getting cigars. You have had dinner, but you have not had a cigar.

I am glad to be here on behalf of the government of the city, and I want to extend to you a most cordial welcome to Toronto. I am glad to see you are an international association. I am glad that is so, because we are all one people. Blood is thicker than water; we are all of one kith and kin and we stand for the same principles—democracy and civilization. We can never forget the generous aid which you gave the great cause in this war. During the crisis of the war in 1916-17 you came to the help of the mother country, and the war would not have been won yet probably but for you. We need not worry about who won the war; there is enough credit to go round.

You are engaged in a very important work—these accident boards and commissions. It is one of the most important works which the government of any country is doing. I am glad that in the Province of Ontario we have a workmen's compensation board second to none in any place. While it is a young board, they have more than made good and fulfilled the high expectations of those who drafted the act.

These are days of stress and strain for every country—unrest the world over. The unrest has shown itself in some countries in what has come to be known as bolshevism, which is the most forcible way of putting the unrest forward. The problems which confront the world to-day can not be solved by any government without the humane united efforts and assistance of the soldiers and all classes of our citizens. We in Canada have been very fortunate. We have happy people here, happy relations between capital and labor on the whole. It is going to continue.

We had a long drawn out war, which made a heavy tax on our country. Out of a population of about 8,000,000 people, according to the last census, Canada contributed 590,000 of her population, and the city of Toronto alone contributed 60,000 to 70,000 men to the colors, nearly all under the volunteer system; and the contributions of the Province of Ontario were one-half of the whole effort of the Dominion of Canada in the war. The Province of Ontario contributed half the money and half the men who went from Canada to serve in Flanders and in France.

We are proud of the work of your own great Government and your own people in this great conflict. They more than made good. I saw some of the soldiers you had at Camp Niagara and some other camps, and you had a splendid body of men.

The Canadian people are a warm-hearted people, and they are fond of their American cousins. We have had nearly a hundred years of peace with you. You have a good neighbor to the north of you. I can not say that much of your neighbor to the south of you, but you have a good friend and lovable neighbor on the northern part of this continent.

You are engaged in one of the most important works in the country—a social work which concerns almost every home. I wish you Godspeed in your work, and I am glad your convention has had such large numbers at your meetings.

Mr. KINGSTON. We will have a few words from Controller Maguire.

Controller MAGUIRE. Time will not permit me to do justice in response to the toast of the city of Toronto, but let me say I indorse every word that his worship the mayor has said. We welcome you because we know that you are a very important convention. Toronto has welcomed many conventions, but I do not think she has ever had the pleasure of welcoming so important a gathering as we are having the pleasure of welcoming to-day.

As an insurance man I remember when workmen's compensation was suggested. When the Ontario government proposed to take up the question of workmen's compensation, like a great many other insurance men, we thought it was impossible. It was ridiculed from every standpoint, but to-day we find that the results speak for themselves, and the results can only be accomplished by having associated with the great workmen of ability men that I see before me to-day that are giving their time—representative men of the different States of the Union, gathered together for the purpose of bettering the conditions of their fellow men. We in Ontario are indeed gratified at the result that has been shown.

Let me say to you, Mr. President, that it was a pleasure for me to take the little part I did when you happened to present the case of this convention to the board of control of which I have the honor of being a member; and, knowing you as well as I do, and how careful you are of the taxpayers' money, I knew you would not come there and make a request unless it was reasonable.

I am delighted now that I know this convention. While I have had only a few minutes to meet some of your delegates, nevertheless I am convinced that this is a representative gathering, an international body, working for the betterment of the conditions of our fellow men.

I am glad to be here with his worship the mayor. To those who do not know him, he is our war mayor, five years in harness. He has got a perpetual franchise. The mayor is loved by the people of Toronto because of the great work he has done for the soldier boys. Mayor Church is always on the job. It is a pleasure for me to be associated with him. His war record will be long remembered by the citizens of the city of Toronto. He has done a great deal for the city and holds a record that no other mayor of the city of Toronto will ever hold, and we trust that he will stay in harness, and I know it will be a pleasure for me to associate myself with him if the people happen to see along the same line. However, that entirely rests with the people. We are a democratic people, and of course the people rule.

Therefore, Mr. President, in these few rambling remarks it is a pleasure for me to be here and meet you, and I am glad that you have associated the ladies with you. The ladies are becoming a very important factor—I think that will be known before long in this great Province of Ontario; when we have the ladies cooperating with the men, working with them, no wrong can come. I thank you.

Mr. KINGSTON. Just before the mayor and Controller Maguire leave may I just intimate to you the status of the convention in point of representation. We have five Provinces from Canada represented—Alberta, one delegate, the chairman of the board; British Columbia, the chairman of the board; Manitoba, three, the chairman and secretary, and also the secretary of the bureau of labor of the Province; New Brunswick, the chairman of the board; Nova Scotia, two, the vice chairman of the board and the medical officer. Then I will pass over our own Ontario representation. We have from the city of Toronto 20 gentlemen officially represented at the convention not associated with the board at all, but delegates from various representative bodies interested in our work. Then from the United States we have Mr. French, from California, 1 delegate; from Connecticut we have 5 delegates, 3 of them being members of the board; from Delaware we have the chairman and secretary and another member of the board; from Idaho, 1 member of the board; from Illinois, 4 delegates, one being the chairman of the board; from Indiana, 3 representatives; from Iowa, 2; from Kansas, 1; from Maryland, 4; Massachusetts, 3; Michigan, 3; Minnesota, 2; Missouri, 1; from New York, 6; from Ohio, 6; from Oklahoma, 1; from Oregon, 2; Pennsylvania, 3; South Dakota, 1; Tennessee, 1; Vermont, 1; Virginia, 1; Washington State, 3; 8 representatives from the United States Federal departments; 1 representative from West Virginia, and 1 from Wisconsin. So you will see, Mr. Mayor, how very wide and comprehensive and representative this association is of the whole of this North American Continent—a total registration

of over 100. It is the largest and most representative convention we have yet held.

The CHAIRMAN. The first paper this afternoon is one by Mr. Samuel Price, chairman of the Ontario Workmen's Compensation Board, dealing with "Some features of workmen's compensation law and its administration".

Mr. PRICE. I must say that it is rather out of my line to attempt what I am expected to perform this afternoon. I am very little accustomed to undertaking anything of the kind or addressing any kind of audience. I have generally left that matter to others, to whom the task is more congenial.

What I have prepared by way of presentation to the association has to do chiefly with the aspects of the workmen's compensation law and its administration. I hope I may be excused if I seem to speak too much or to praise too much our own law and our own methods; I am more familiar with those than with any other, and perhaps when the members of this association have been good enough to meet in our Province they will welcome a little more than the ordinary information concerning our act and our methods of administration.

## **SOME FEATURES OF WORKMEN'S COMPENSATION LAW AND ITS ADMINISTRATION.**

BY SAMUEL PRICE, CHAIRMAN WORKMEN'S COMPENSATION BOARD, ONTARIO.

What I have to offer as a contribution to the program of the association will have to do chiefly with the practical aspects of workmen's compensation law and its administration, and will be to a very great extent from the point of view of our Ontario act, with which I have been in very close communion for the past five years, and for the administration of which, up to the present time, I have been largely responsible.

I may confess my bigotry at once by saying that I am a great believer in the virtues of our act and in the methods adopted in its administration, though we are always looking to further improvement and hoping for nearer perfection.

### **THE ONTARIO ACT.**

The Ontario act, in relation to most of the industries to which it applies, is a compulsory and exclusive collective liability or mutual insurance system, administered by a Government-appointed board without any resort to the courts. A few of the industries under it are, however, upon the individual instead of the collective liability plan, so that there is opportunity to compare the working of the two systems side by side.

All personal injuries resulting from accident arising out of and in the course of the employment are compensated, except where the accident is attributable solely to the workman's serious and willful misconduct and does not result in serious disablement.

The benefits, in total, are probably now as liberal as under any existing compensation law. The general basis of allowance is 55 per cent of lost earnings, payments being continued as long as the disability lasts, being limited only by the life of the workman and a maximum wage of \$2,000 a year.

The form of payment for all permanent disabilities, partial as well as total, is a monthly pension for life, except where the impairment does not exceed 10 per cent of total disability, the healing period being first taken care of by biweekly payments.

Compensation dates from the commencement of disability, but no compensation is paid when the disability lasts less than seven calendar days.

In death cases flat monthly pension allowances are fixed for the widow and children, the widow receiving \$30 a month and each child under 16, \$7.50 where there is a widow and \$10 where there is no widow, but not exceeding \$60 a month in all, so far as the 55 per cent of average earnings will permit these payments.

All necessary medical, surgical, hospital, and skilled nursing services are now provided without limitation.

The benefits are in lieu of action at law for damages, and the employer is entirely free from such actions in matters covered by the act.

The greater part of the administration expense is paid by the Province.

I feel that the strong points in our law and its administration are simplicity of procedure, expeditious payment of benefits, elimination of litigation and expense, and limitation of the employers' burden as nearly as possible to what the workmen and their dependents actually receive.

Perhaps most important of all is the speedy payment of compensation. Nothing is more appreciated by the injured workman. The absence of appeal and the methods of administration adopted conduce to celerity in the disposition of claims, as well as saving expense to all parties.

#### PROCEDURE VERY INFORMAL.

Our procedure is very informal and summary. Reports from the workman, from the employer, and from the doctor, upon forms carefully designed for the purpose, usually suffice for the settlement of claims. These are examined and checked and the amount of compensation computed by our claims and medical staffs. Recommendations from the medical and claims officers and approval of a member of the board, without which no claim is allowed or rejected, complete the case, and order is issued and payment made without further formality. If the information in the reports is not sufficient or satisfactory, further information is requested, and where it seems desirable investigation is made on the ground by an officer of the board, or examination and report made by a medical referee. Doubtful cases are considered by the board in session, but it is very rarely that the board has anything in the nature of a formal hearing.

In ordinary cases the first check is forwarded within a few days after the reports are all received; our average for all cases is about five calendar days. Subsequent biweekly payments go out on the day they fall due if the information on file warrants it.

Special reports are obtained from the doctors, the workman, and the employer in all permanent disability cases, examination also

being made by a medical referee or the medical officers of the board and by other officers and by members of the board wherever deemed best; and after a specially qualified officer, with the help of a disability rating schedule, makes a recommendation as to the allowance, the board in session considers the case and makes the award.

Reconsideration of any case is freely given, the more so because of there being no appeal.

The workman's own separate statement is obtained in every matter, a form which is easily filled up, being always sent directly to him for this purpose. He has no need of a solicitor or agent or of paying solicitor or agency fees.

The framer of the act, the present chief justice of Ontario, said that one of the chief purposes was "to get rid of the nuisance of litigation" and "to have swift justice meted out to the great body of the men" even though some mistakes might be made. A man less eminent in law and in the affairs of the country might hardly have ventured on legislation so radical or drastic, especially as to the absence of appeal. In this respect we are perhaps free from some of the constitutional difficulties existing in the United States. Our act also now expressly provides that the decisions of the board shall be upon the real merits and justice of the case and that the board shall not be bound to follow strict legal precedent. The chief justice expressed himself as "shocked" by some of the English cases in which the workman had failed to recover, though, as he said, the court decisions might from a legal point of view be technically sound.

In conformity with the provisions and the spirit and intention of the act we endeavor to adopt a liberal and common-sense but consistent and not too loose an interpretation, and in a number of matters have departed from English decisions. Instances of departure are: A broader interpretation as to what arises out of and in the course of employment; allowance of compensation for street and railway accidents even though the workman is not specially exposed to these risks; compensating innocent victims of other workmen's pranks or misconduct; and compensating children employed in contravention of the child-labor act.

What a court of appeal would do in some of these matters, if an appeal were allowed, may be doubtful. In the case of street and railway accidents a long line of prior decisions were reversed a couple of years ago by the English court of last resort. The child-workman's decision has been reversed by legislation. An appeal would, of course, in many respects seem desirable if it did not take away other advantages. The appeal usually allowed under such acts, however, is upon questions of law and not upon the facts or general merits of the case, and still leaves the party open to injus-

tice, if injustice is going to be done; and such an appeal seems incompatible with the spirit and intention of the act, which is to get rid of legal technicality.

#### COLLECTIVE LIABILITY SYSTEM.

One of the most important matters in connection with a workman's compensation law is whether it should be an individual or a collective liability system, and whether there should be private or State-administered insurance.

I think the answer depends largely upon the character of the administration. While not altogether subscribing to the maxim, "That which is best administered is best," I believe that the administration of any workman's compensation law is in many aspects quite as vital as the nature of the law itself. This is especially true of a collective liability or State insurance system. It needs careful and efficient handling. But I feel there are great advantages in such a system.

We are told, I believe on good authority, that from 40 to 60 per cent of the premiums paid to private insurance companies is consumed in expenses and profits, and that less than 25 per cent of the premiums paid under the old employers' liability insurance actually reached the hands of the workman or his dependents. Under laws in which court procedure, representation by lawyers, and rights of appeal prevail this figure is still probably not far from the truth. How wasteful this seems—\$4 collected from the employer in order that the workman may receive \$1. Can this waste not be avoided? I think the nearly five years' experience we have now had in Ontario and similar experience elsewhere shows that it can.

Last year in Ontario only 1½ per cent of all the assessments paid by employers (exclusive of the amount expended by themselves in safety work) went toward expenses. The other 98½ per cent was for actual benefits to the workmen, and none of it was needed for litigation or legal fees. When everything that is collected from the employer goes for the benefit of the workman we have compensation at cost in its strictest and truest sense.

The rates of assessment prevailing in different jurisdictions, I think, very clearly reflect the saving effected by the collective or State insurance system, especially where it is an exclusive one. A comparison of the tables of rates shows striking contrasts. Our rates in Ontario average less than half what is usually charged for the same amount of benefit under private or mixed insurance systems. With the general movement now against profiteering why should unnecessary profits not be eliminated from workmen's compensation cost? At a time when expenses of every kind were constantly soaring the rates in Ontario were reduced from an average

of \$1.64, as originally fixed, and \$1.27, as finally adjusted for 1915, to an average of \$1.09 for 1918, though limited medical aid was added to the act in 1917.

The objection that under the compulsory and exclusive State system the careful employer has to contribute for the accidents of the careless one can be at least largely met by a reasonable system of merit rating and by inspection and accident-prevention work, which with us is carried on by associations of employers organized under the act, and our act also provides for special assessment upon the careless employer, which we have not hesitated to put into effect in flagrant cases. And when the rates are so much lower than under the other system the objection at all events loses most of its force.

We have found we can settle and pay compensation more promptly and with less trouble under the collective system than under the individual liability system, though in the latter much depends upon the attitude of the employer or the insurance company. The necessity of seeing to the security for payment of compensation is obviated.

Workmen prefer the collective plan, because they know that under it the employer is less likely to oppose compensation or seek reduction of the amount, and because the workman is less likely to be under constraint in seeking what he is entitled to. The avoidance of friction between employer and employee is also a very important feature, especially in the present time of industrial unrest.

The question of direct settlements between the parties, or with the insurance company, which, even from our limited experience of it in Ontario, I feel is highly objectionable and liable to gross abuse, does not arise in the collective liability system. Under the latter there is no motive to pay the workman less than he should receive and no motive to charge the employer more than he should pay.

The collective system largely solves the difficulties of aggravation of injury and increased compensation by prior injury or impairment, the burden being upon the class and not upon the individual employer.

It also simplifies the question of choice of doctor, taking away the direct motive of the employer to seek a doctor who is prejudiced in his favor, and leaving it to the workman and the employer jointly or to the administering board that is paying the doctor to choose only from the point of view of efficiency and reliability.

#### NEEDS EFFICIENT ADMINISTRATION.

The collective liability system undoubtedly has many and very great advantages, but if it is to be a success it must be conducted strictly upon business principles and with efficiency, fearlessness, and impartiality. This is true in respect to public ownership or publicly administered utilities of any kind. Our Ontario hydro-

electric system, of which we are very proud, has demonstrated how public ownership and public administration of utilities can be made a success. Energy, determination, disinterestedness, and a passionate devotion to the cause, on the part of the head of the hydroelectric, have made it the success it is. Other examples could be quoted where public administration of utilities has not been a success. Such administration is beset with dangers and difficulties. Looseness, extravagance, and indirect influences are too apt to creep in. A high sense of public duty and courage and determination on the part of the administering body, as well as integrity and capability, are needed to steer a straight and even course, and barnacles must not be permitted to encumber the ship.

#### THE POLITICIAN.

One of the pitfalls is party favoritism. Some of the politicians think the act should be administered for the benefit of themselves and their friends rather than in the interest of the workman and employer or the community at large. We are sometimes self-complacent enough to claim that in this respect we are not like others across the border, but turning public administration to partisan uses is not a thing unheard of here. Not long after our board was organized demands were made that appointments to the staff should be upon political considerations. This was refused, the act leaving the appointments in the discretion of the board itself. Many political recommendations to appointments are scarcely better than applications for pensions for political services, with little or no regard to fitness for the work. Merit should be the sole requisite for appointment and the only basis of promotion.

Far worse are attempts to influence the board's awards and decisions in favor of political friends or for the exploitation of a political representative. Some one wants more compensation or a reduction of assessment, and political reasons are urged for granting it, or the good offices of a member of the House are sought to intercede with the board. Sometimes persuasion is tried, sometimes threats. Often the gross impropriety, if not criminality, of such actions is not realized. The board should be as absolutely bound by the merits and justice of the cases with which it has to deal as any court and should equally with such a court resent any attempt at coercion or personal or partisan influence. When this position comes to be understood, there is usually little trouble.

In regard to the attitude of the political parties of the Province in general, it is a matter for congratulation that neither has shown a disposition to attack or criticize the work of the board, and both have endeavored to assist in improving the act and making its administration a success.

## RELATION OF LAWYER.

Another matter as to which I feel a positive and definite stand should be taken and adhered to is the relation of the legal profession to the act. The endeavor was to make the act so simple in its provisions and operation that lawyers and legal expenses would not be necessary.

In most cases the amounts involved are small and the payments almost invariably so. To deal with these through a legal practitioner could not but be regarded as a very wasteful practice, entailing either an undue percentage of expense to the workman or unremunerative work for the solicitor. An illustration of this is the case of a solicitor who in the earlier history of the act acted for a workman in a very simple case, where his services were of no possible benefit to the workman except in the character of an amanuensis to fill up one or two simple forms and write a few letters. Checks in favor of the workman amounting to a little over \$100 reached the hands of the solicitor. He rendered a bill for about the same amount, but reduced it so that \$5 was handed back to the workman. Subsequently taxation of the bill was had, reducing it to \$38.65, which must still be regarded as an exceedingly large amount and a most unreasonable burden to put upon the workman.

This I know is far from typical of the general character of the profession, which stands as high in honor and integrity as any class in the community and than whom upon the whole there is no more satisfactory class with which to deal. But, unfortunately, unscrupulous members are apt to get a large proportion of claim work, and the expense is at all events unnecessary; and I think in this as in other matters it is the duty of the board to take active and effective means to safeguard the interest of the workman and his dependents.

Our act seeks in various ways to protect the workman. He is not permitted, for instance, to make an agreement with the employer to waive his right to compensation or, as a rule, to fix the amount of it; nor is his compensation assignable or attachable without the approval of the board. The pension form of payment is prescribed wherever the amount of compensation is large. The employer is prohibited, under penalty, from receiving or retaining even voluntary contributions from the workman toward the benefits provided for by the act. It is in keeping with these provisions and with the spirit and intention of the act that the workman and his dependents should also be protected from legal expense.

In the handling of claims we therefore insist as far as possible upon carrying on all communication directly with the workman, and upon putting into his own hand the compensation which the act intends he shall have for the benefit of himself and his family.

Under the law of Great Britain, where there is much formality of procedure and a right of appeal, and which is an individual liability law, the legal expense is very great, and it is estimated that from this and other causes the workmen and their dependents receive only about 50 per cent of the nominal benefits provided for by the act.

#### MEDICAL AID AND DOCTOR.

Whatever may be the medical aid provision the relation of the medical profession to the act must always claim a good deal of attention. After passing through the stages of no provision for medical aid when the act commenced and a month's medical aid during about two years, we have recently arrived at a medical aid provision without limitation of time or amount, which I think is the only proper or logical or reasonable provision, as the ordinary workman is less able to pay for a long attendance than a short one and less able to pay a big bill than a small one.

In this, as in other matters of administration, the first consideration must be to get efficient and honest service. Much complaint was made by the profession originally of there being no provision in the act for payment for doctors' services to workmen, and afterwards of the limitation of payment to one month; and undoubtedly doctors in these cases as in many others very often did much work without remuneration. The present provision should be very satisfactory, and under the collective liability system the absence of any constraint to favor any party or to deprive the workman of anything to which he is entitled should make the position of the doctor much more agreeable. Under our collective system he is in effect an officer of the board and under corresponding obligation to perform his duty without fear or favor.

With the direct interest of the employer removed, there is less reason for controversy as to choice of doctor. Our policy up to the present time has been an open field to all members of the profession with as little interference as possible on the part of the board, the workman and employer being encouraged to agree upon the doctor and the board stepping in only where it is found that the doctor has not been satisfactory. I regret to say this open policy has not been entirely successful. Some members of the profession apparently do not realize the duties of their position, and unfortunately also rather frequent instances of exorbitant charges, padding of accounts, multiplication of attendances, and even dishonest and fraudulent practices by some unscrupulous members occur. Here, as with the legal practitioner, cases too frequently fall into the hands of the less reputable members of the profession, often, no doubt, by reason of unprofessional or improper means and inducements being used to secure the

work. The ambulance-chasing doctor is as little conducive to the proper administration of the act as the ambulance-chasing lawyer. With the provisions of the law as they now are there is no need and no excuse for employing any but capable and reliable members of the profession.

Upon the whole, however, the difficulties in regard to medical aid, as in matters of administration generally, have been less than might have been expected.

#### HELPS IN ADMINISTRATION.

With us in Ontario the generally favorable attitude of the workmen toward the act, which they had a large share in framing, has assisted in making administration easier. The manufacturers also favored the collective liability system, though strongly opposing the passing of the act because of the liberal and, as they thought, too burdensome scale of benefits. The rates which they have been called upon to pay have left little room for complaint as to the amount of burden, and from the general body of employers complaints of any kind are rare.

The greatest asset in the administration of such an act is an efficient and properly organized staff whose members take a pride in the creditable performance of their duty, and in this respect I feel we have been fortunate. In carrying out my own part I have found no royal road except constant attention to duty and hard work. I know of no position in which earnestness of purpose and a keen sense of responsibility are more essential. Few afford higher opportunities for rendering worthy public service.

The CHAIRMAN. It may be at this time—particularly our friends from across the line may be desirous of asking questions from Mr. Price. We in Canada do feel that we would like you from the other side to more fully understand the law in force in Canada. We are particularly pleased with it and we think it is a good system. We would like to see our act carefully studied by those coming from the other States; and this, I think, is a very proper time to ask questions if you so see fit. If there are not any questions we will proceed with the next paper.

The next paper is that by Mr. E. E. Watson, chief actuary, Ohio Workmen's Compensation Board, on "Comparison of insurance rates under different systems."

Mr. WATSON. Mr. Chairman, if I may be permitted to digress from the subject that has been assigned to me in this paper I shall do so by way of prelude to the paper. I simply want to refer to something that has weighed rather heavily on my mind, and I think it has been made more acute since coming to the Ontario Province than it ever has been before; and by way of coming to what I want to say—

I do not know whether I can express myself with clarity or not. In the first place, Mr. Price and Mr. Kingston, I feel that every commission from the States has to pay tribute—and I certainly take the opportunity of doing that at this time—to what I consider one supreme virtue of your plan; and that is, in regard to the manner in which the members of the board are appointed to these positions. It is a situation with the industrial accident boards and commissions of the States that to me is depressing, and that is the fact that changes are taking place with rapidity in the personnel of the boards and commissions.

I feel this, the condition under which your members are appointed to the boards of not only Ontario but of British Columbia and Nova Scotia and other Provinces—conditions are created which bring a man to the surface for a period of a lifetime to specialize in problems that are most multitudinous and complex in their character, and on a basis of compensation that does not require too great a personal sacrifice. I do not say this in disrespect of the accident boards and commissions of the United States, because a thing that has always astonished me is the men we have been able to command under the circumstances; and I am able to explain it under no other condition than the fact that it is the great human theme that has appealed to these men. But I am frank to say that when I see a man on these boards who, just when he becomes a specialist in this field, is dropped because of political variances and political demands, I may say personally it makes me heartsick when I learn of those conditions. I say that at this time simply by reason of the fact that I do feel you have so effectively controlled that in this Province, and I take this opportunity to pay the highest tribute within my power to that phase of your act in particular.

Having made that statement I come directly to the paper which has been assigned to me. I hope you feel the greatest freedom at any time in interrupting me in this paper.

## COMPARATIVE INSURANCE RATES UNDER DIFFERENT SYSTEMS.

BY E. E. WATSON, CHIEF ACTUARY OHIO INDUSTRIAL COMMISSION.

Inasmuch as the Ohio State insurance fund is the largest carrier of workmen's compensation insurance in America, its experience has been taken as the base in the development of this paper.

The magnitude of the subject assigned to this paper has made it necessary to restrict its application. For this reason it is being confined to a comparison of the workmen's compensation insurance rates of the Ohio State fund and of the private stock casualty insurance companies. Rates are but the index of cost and therefore the following computations:

### OHIO STATE INSURANCE FUND.

The examination of the Ohio State fund, recently completed by Examiners Downey and Dawson, shows that the incurred losses of the fund for the nine and one-half months ending Mar. 1, 1919, were \$8,231,034. Projected to 12 months, this means that the incurred losses for the last year's operation of the fund were..... \$10, 397, 096

This same examination further shows that the entire cost of administering the Ohio State fund for the year ending June 30, 1919, was, in round numbers..... 350, 000

Therefore, the annual incurred losses plus the expense of operating the Ohio fund for the past year, amount to..... 10, 747, 096

This is an expense ratio of 3.4 per cent.

### PRIVATE STOCK CASUALTY INSURANCE COMPANIES.<sup>1</sup>

If the Ohio workmen's compensation act had been in the hands of the private stock casualty insurance companies during the past year, these companies would have charged the Ohio employers compensation rates, 60 per cent of which would be to cover "incurred losses" and 40 per cent to cover "expense and profit" loading.

Assuming the incurred losses of the stock insurance companies the same as those incurred by the Ohio fund, then 60 per cent of their rate to cover their losses for the past year would be..... \$10, 397, 096  
Their remaining 40 per cent of their rate to cover expenses and profits would then be..... 6, 931, 397

<sup>1</sup> For revised computation see pp. 337-341.

Therefore, the annual cost of Ohio workmen's compensation act in hands of private stock companies for the past year would have been .....	\$17, 328, 493
Annual cost of Ohio workmen's compensation act (including cost of operation) in hands of Ohio State fund for past year.....	10, 747, 096
<hr/>	
Annual increased cost of private stock company system over Ohio State fund.....	6, 581, 397

This is an increase of 61.2 per cent.

The foregoing is subject to three modifications:

The first is that if the private stock casualty insurance companies had provided the Ohio employers their workmen's compensation insurance, disclosures of their methods of claim settlements, such as those recently made in New York, strongly indicate that the injured workmen of Ohio and their dependents would have received substantially less than the \$10,397,096 provided by the Ohio State fund in workmen's compensation benefits during the past year.

The second is that, predicated upon what it is costing other States where these casualty insurance companies are permitted to operate, it would have cost the State of Ohio \$200,000 to attempt to super-vise the claim settlements and rates of those casualty companies (which is four-sevenths of the entire cost of administering the Ohio State fund.)<sup>2</sup> In consequence, taking this factor into consideration, the net cost to the State of paying the annual administrative cost of the fund has in reality been about \$150,000.

The third is, Examiners Downey and Dawson concur in stating that this annual appropriation of \$350,000 allowed the Ohio State fund was wholly inadequate, the former saying that the same should have been practically double \$350,000. So, assuming the administration expenses of the fund for the past year had been \$700,000 instead of \$350,000, the Ohio plan as compared with the private stock companies, would be saving annually, in round numbers, \$6,000,000.

**COMPARISON BETWEEN RATES OF THE WORKMEN'S COMPENSATION INSURANCE STOCK COMPANY OF NEW YORK AND OF THE OHIO STATE INSURANCE FUND.**

In making a comparison between workmen's compensation insurance rates of any two given States, the first step is to reduce all factors involved to a point of direct comparability.

*Comparative scale of benefits of the New York and Ohio compensation acts.*—By reference to page 67 of the report issued by the National Workmen's Compensation Service Bureau entitled "Report of the work of the augmented standing committee on workmen's compensation insurance rates," it will be noted that, as of January 1, 1917, the law differential for New York was computed at 1.89; and for Ohio, at 1.70:

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<sup>2</sup> Which is an offset to the factor of taxes of the stock companies.

Page 173 of this same report reads as follows:

State law differentials computed by the actuarial committee of the National Workmen's Compensation Service Bureau for the compensation laws as amended down to and including January 1, 1918.

This computation raises the New York law differential to 1.91, which, I am frank to state, is, in my judgment, entirely too low. It fails to provide a revised law differential computation for Ohio. But the 1917 Ohio General Assembly increased the death benefits of the Ohio compensation act  $33\frac{1}{3}$  per cent; removed entirely the \$200 maximum medical limit. The commission subsequently greatly increased its medical and hospital fee schedule; and the 1919 Ohio General Assembly increased the weekly maximum compensation benefits of all temporary total disability accidents 25 per cent (conserving the maximum total compensation of \$3,744). The foregoing combined amount to a composite increase of over 25 per cent, thereby raising the Ohio differential (predicated upon the above, Jan. 1, 1917, law differential) considerably above 2.

Other methods of computation indicate that the Ohio scale of benefits is not lower than the scale of benefits of the New York act; so it appears eminently fair, considered from the viewpoint of the New York rates, to proceed with this computation predicated upon the assumption that the scales of benefits of the two acts are equal.

**DECREASES TO BE MADE IN NEW YORK RATES TO MAKE SAME DIRECTLY  
COMPARABLE WITH OHIO RATES.**

1. *Taxes.*—The New York rates are loaded with  $2\frac{1}{2}$  per cent for taxes. The Ohio State fund is required to pay no taxes. Therefore the New York manual rates have been decreased  $2\frac{1}{2}$  per cent so as justly to eliminate this factor from the computation.

2. *Difference in merit-rating systems.*—The June 25, 1919, report issued by the New York Compensation Inspection Rating Board shows the following results as the effect of the application of the merit-rating system in operation in that State for the year ending June 30, 1919:

Reduction in rates through application of industrial compensation rating schedule with respect to 1,760 risks, 4.3 per cent.

Reduction in rates through application of experience rating plan with respect to entire 3,000 risks, 17.9 per cent.

Net reduction through application of both schedule and experience rating with respect to 3,000 risks, 20.4 per cent.

But, only some 50 per cent of the premium of the State is subject to schedule rating, and less than 50 per cent is subject to experience rating, in view of which I have estimated that the composite effect of the application of schedule and experience rating in New York for

the last year has been to make a broad average net premium reduction of merit-rated and nonmerit-rated risks combined of 10 per cent. This is certainly a fairly conservative estimate. I have therefore further decreased the New York manual rates 10 per cent on account of the foregoing net reduction as the result of the operation of their merit-rating system.

3. *Reduction account of difference in method of rating office pay roll.*—In New York all office pay roll is rated on the basis of a strictly clerical office rate, whereas in Ohio (with the exception of that office pay roll which is in excess of 10 per cent of the grand total pay roll) all office pay roll is rated upon the basis of a composite rate—viz, the manual classification rate. A broad test shows that if the Ohio plan of rating office pay roll were operative in New York its effect would be to reduce the premium income 6.5 per cent. Therefore the New York rates, for the purpose of comparability with Ohio rates, should further be reduced 6.5 per cent as the result of the difference in the rating of office pay rolls.

**INCREASES TO BE MADE IN OHIO RATES TO MAKE SAME DIRECTLY COMPARABLE WITH NEW YORK RATES.**

1. *Merit-rating system.*—Prior to July 1, 1919, the Ohio fund merit-rated industrial risks solely on the basis of penalization charges, and contracting risks solely on the basis of credits. This meant that the manual rates for industrial risks were minimum rates, whereas the manual rates for contracting risks were maximum rates. The composite result of these two merit-rating plans to March 1, 1919, was to make a net increase in the Ohio rates of  $3\frac{1}{2}$  per cent. But as of July 1, 1919, the credit or reward merit-rating system was made applicable to all industrial risks, the debit system still being retained. The effect of this amplification of the merit-rating system will be to reduce the foregoing  $3\frac{1}{2}$  per cent almost to zero. For this computation I am allowing for a net increase of 1 per cent in the Ohio State fund rates as the result of the application of our present merit-rating system.

2. *Cost of administration.*—As noted in the preceding, the incurred losses of the Ohio fund for the past year were \$10,397,096, whereas the cost of administering the plan was in round numbers \$350,000. But, under the Ohio plan, the cost of administration is not loaded onto the rate, inasmuch as this entire cost is borne by the State. Therefore, the Ohio rates must be increased by the expense of administration to make the same directly comparable with the New York rates, and \$350,000 is an increase over \$10,397,096 of 3.4 per cent. In consequence, the Ohio rates should be further increased 3.4 per cent for cost of administration.

3. *Contributions from self-insuring risks.*—The Ohio law requires all self-insuring risks to pay into the catastrophe fund an amount equal to 5 per cent of what their full State insurance premium would have been had they been subscribers to the fund. Five per cent of the premium of the subscribers to the fund is also credited to the catastrophe fund. It is within the power of the commission to diminish or entirely eliminate this charge when, in its judgment, the catastrophe fund has reached a point of sufficient magnitude properly to safeguard the fund.

In view of the fact that, as of March 1, 1919, this catastrophe fund was \$1,052,700, the commission reduced the 5 per cent charge to 4 per cent. This contribution from the self-insuring risks is equal to 2.3 per cent of the total premium of the State insuring risks. In view of this contribution, the Ohio rates are increased a further 2.3 per cent.

The foregoing analysis then provides the way for the following:

*Percentage decreases in New York rates to make the same directly comparable with the Ohio rates.*

Taxes .....	2.5 per cent.
Merit rating differential.....	10.0 per cent.
Office pay roll rating differential.....	6.5 per cent.
<hr/>	
Total percentage decrease.....	19.0 per cent.

*Percentage increases of Ohio rates to make the same directly comparable with the New York rates.*

Merit rating differential.....	1.0 per cent.
Expense of administration differential.....	3.4 per cent.
Self-insurance contribution.....	2.3 per cent.
<hr/>	
Total percentage increase.....	6.7 per cent.

In considering the above percentages, the three modifications referred to on page 326, should also have consideration at this point. Inasmuch as this last computation is dealing, not with pure premium rates, but full premium rates, it is highly important that two additional points be taken into consideration:

First. As of March 1, 1919, the rates of the Ohio fund had produced a total surplus of \$3,682,471. A 10 per cent dividend was declared as of July 1, 1919, which returns approximately \$1,000,000 of this surplus to the subscribers to the fund. It is certainly conservative to estimate that the July 1, 1919, rates of the Ohio fund will make another 10 per cent dividend available to its subscribers as of July 1, 1920, whereas the New York stock company rates as

used in the subjoined comparative table do not admit of 1 per cent of such dividend. The surplus they create is for the stockholders of these companies and is not for the New York employers.

Second. The Ohio State fund has fixed no minimum premium, whereas the lowest minimum premium of the stock companies for New York is \$11, ranging up to the highest minimum premium of \$229.

The 125 classifications contained in the following comparative table, are those containing the largest pay roll exposures under the Ohio State fund, involving a total earned pay roll exposure of \$1,991,724,766. The average New York stock company manual rate, derived by applying the respective New York stock company manual rates ( as shown by their official rate sheets) against the earned Ohio pay roll of each of these 125 classifications, is \$3.13; whereas the average rate, similarly computed for the Ohio State fund, is \$1.53.

Thus, for New York:

Pay roll, \$1,991,724,766; average manual stock company rate,	
3.13; making total premium.....	\$62, 415, 380
Less 19 per cent.....	11, 858, 922

New York premium reduced to basis for direct comparability with Ohio premium.....	50, 556, 458
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And, for Ohio:

Pay roll, \$1,991,724,766; average Ohio fund manual rate, 1.53;	
making total premium.....	\$30, 469, 433
Plus 6.7 per cent.....	2, 041, 452

Ohio premium increased to basis for direct comparability with New York premium.....	32, 510, 885
Excess cost of New York plan over Ohio plan.....	18, 045, 573

An increase of 55.51 per cent.

The significance of this computation is the degree to which it constitutes a check against the computation carried on the first page of this paper, the former developing an increased percentage of average rates or cost of the stock company over the Ohio State fund plan of 55.51 per cent, as against 61.23 per cent developed by the latter. These two percentages, arrived at through entirely independent processes of computation, check remarkably when viewed in the light of the five differentials indicated above.

NEW YORK STOCK COMPANY CURRENT RATES COMPARED DIRECTLY WITH OHIO STATE FUND JULY 1, 1919, RATES, IN WHICH TABLE THE NEW YORK MANUAL RATES HAVE BEEN DECREASED 19 PER CENT AND THE OHIO MANUAL RATES INCREASED 6.7 PER CENT, THEREBY MAKING THE SAME DIRECTLY COMPARABLE.

Classification.	New York Stock Company current manual rates, less 19 per cent.	Ohio State fund July 1, 1919, manual rates, plus 6.7 per cent.
Additions to buildings and plants.....	3.24	2.24
Automobile garage (salesmen, repairers, and drivers).....	1.19	1.01
Automobile manufacturers.....	1.43	1.01
Bakeries.....	1.37	1.65
Beet-sugar manufacturers.....	3.09	2.08
Bicycle and bicycle parts manufacturers (also assembling manufactured parts).....	1.19	1.23
Blast furnaces, operation of.....	8.50	3.41
Boat building (iron, steel, or wood, when scaffolding is used).....	3.54	4.53
Boiler makers.....	3.72	2.56
Box manufacturers (folding paper boxes).....	1.79	1.28
Boxes, solid paper, manufacturers.....	1.79	1.81
Brass goods manufacturers.....	1.79	.70
Breweries.....	2.85	2.03
Brick manufacturers (digging and quarrying).....	2.34	1.76
Bridge building (metal).....	10.23	7.32
Bridge works.....	4.69	4.95
Building material dealers.....	2.23	2.61
Canneries (no can manufacturing).....	1.79	1.65
Card and Bristol board manufacturers.....	2.83	2.45
Carpenters and contractors (away from shop).....	7.08	3.84
Carriage, coach, and wagon manufacturers.....	2.48	1.87
Carriage, coach, and wagon manufacturers (assembling parts).....	1.09	1.23
Cellar excavation.....	7.43	2.19
Chair manufacturers.....	2.58	1.07
Cigar and cigarette manufacturers (hand made).....	.40	.11
Clay or shale mines.....	7.78	2.99
Clothing manufacturers.....	3.33	.14
Coal merchants (land only).....	3.55	2.49
Coal mining.....	16.30	3.84
Coffin and casket manufacturers (wood).....	2.83	1.33
Concrete work, bridge building.....	8.12	10.83
Concrete work, floors and pavements, not self-bearing.....	2.06	.91
Concrete work, reinforced construction (not grain elevators).....	7.08	4.96
Creameries.....	1.57	1.44
Dairies.....	1.57	1.44
Department stores.....	.47	.30
Drop forging works.....	2.58	2.35
Drug manufacturers.....	.79	1.01
Earthenware manufacturers (tiling, gas retorts, etc.).....	2.13	1.17
Electrical equipment, installation in buildings.....	1.64	1.12
Electric apparatus manufacturers.....	1.37	.98
Electric light and power companies (operation, maintenance, etc.).....	5.90	4.66
Enamel and agate ware manufacturers.....	2.34	1.17
Fireproof equipment manufacturers.....	1.66	2.35
Forging works (steam).....	4.07	4.00
Foundry (brass).....	1.79	1.01
Foundry (iron).....	2.06	1.65
Foundry (steel castings).....	4.07	2.51
Furniture dealers (store only).....	.82	.64
Furniture manufactures and finishing.....	1.89	.94
Gas works (maintenance).....	2.34	1.76
Glass manufactures (common window).....	.96	.80
Glass manufactures (no plate or window glass).....	1.30	.48
Grain elevators (line or terminal).....	3.55	1.44
Hardware manufactures (carriage).....	2.58	1.42
Iron and steel works (fabricating structural iron and steel).....	4.69	3.89
Iron and steel works (railing, balconies, fire escapes, etc.).....	4.69	1.81
Ice manufactures (artificial).....	3.90	2.61
Iron workers (structural erection).....	16.98	9.28
Laundries.....	1.57	.69
Lead manufactures (red and white).....	3.72	1.64
Lime quarries (crushing and blasting).....	7.08	4.51
Machine shop (no foundry).....	1.79	1.33
Machine shop (with foundry).....	2.06	1.55
Malleable iron works.....	2.58	1.71
Masonry work.....	7.08	3.04
Match manufactures (no lumber or sawing operations).....	2.58	1.07
Milling (general).....	2.68	2.23
Millwrights.....	2.96	1.71
Mine car and contractors' equipment manufacturers.....	3.72	2.29

<sup>1</sup> Estimated rate established on basis of ratio developed from coal mining rates of stock companies of other States where their quotations were available.

## 332 COMPARATIVE INSURANCE RATES UNDER DIFFERENT SYSTEMS.

NEW YORK STOCK COMPANY CURRENT RATES COMPARED DIRECTLY WITH OHIO STATE FUND JULY 1, 1919, RATES, ETC.—Concluded.

Classification.	New York Stock Company current manual rates, less 19 per cent.	Ohio State fund July 1, 1919, manual rates, plus 6.7 per cent.
Newspaper offices.....	0.61	0.23
Office building (care and maintenance).....	1.22	1.49
Oil, crude, petroleum refineries.....	2.13	.96
Oil producing.....	5.39	1.97
Oil-producing operation.....	2.58	1.81
Packing houses (handling cattle and slaughtering).....	1.96	2.08
Painting and decorating (including steel structures and bridges).....	16.98	7.79
Paint manufactures (no lead).....	2.48	1.01
Paper manufactures (no writing paper, no wood pulp).....	2.83	2.45
Potteries (general ware, or sanitary, or china, etc.).....	.92	.32
Paviors n. o. c., including shops and yards.....	2.08	1.92
Pile drivers.....	8.91	7.84
Pipe and cast-iron manufactures.....	4.07	2.35
Planing and molding mills.....	3.24	2.24
Projectile shell or case manufactures.....	1.79	1.23
Printers.....	.82	.43
Pump manufactures.....	1.79	.96
Retail stores.....	.40	.48
Rolling mills (metal, plate, and sheet only).....	2.48	1.49
Rolling mills (no rod mill).....	3.55	2.08
Rolling mills (rolling bars only).....	3.09	2.08
Rolling tin and terne plate.....	2.48	1.12
Roofers (not structural, not concrete).....	7.78	5.82
Rubber manufactures.....	1.71	1.07
Rubber tire manufactures.....	1.57	.71
Safe manufactures.....	3.24	1.12
Sand and gravel diggers.....	5.14	4.75
Sash, door, and blind manufacturers.....	3.24	2.08
Sawmills.....	8.12	4.85
Scrap-iron dealers.....	9.33	6.67
Screw manufactures.....	1.22	.69
Sewer building (maximum depth, 7 feet).....	6.46	3.36
Sewer building (no limit to depth).....	8.91	8.48
Sheet metal workers.....	1.96	1.97
Shoe and boot manufactures.....	.53	.37
Soap and soapine manufactures.....	1.96	1.97
Spring manufactures.....	2.13	1.44
Stamping works (metal).....	16.98	9.81
Steam shovel, dredge, and ballast loader manufactures.....	3.72	1.49
Steel works (open hearth).....	4.69	2.45
Steedores or lumpers (coal or ore handlers).....	13.48	3.68
Stove manufactures (sheet iron).....	2.08	.96
Stove manufactures (not sheet iron).....	1.57	1.44
Street and road making (no quarrying).....	3.09	1.92
Tank builders.....	3.72	1.44
Telegraph and telephone companies (operation and maintenance).....	4.28	3.84
Tile, roof, and drainage manufactures.....	1.64	1.12
Tool manufactures.....	1.19	.91
Tool manufactures (machine).....	1.19	1.39
Tube, metal, manufactures.....	3.24	1.10
Warehouse and storage (general).....	2.58	2.13
Waterworks (laying of mains, etc.).....	4.90	2.56
Weavers and spinners.....	.96	.64
Wholesale stores.....	.50	.48
Wreckers (not marine).....	18.61	19.05

I have computed the average current stock company rate of 30 other States for the foregoing 125 classifications just as I derived the same for New York, and have obtained the results included in the subjoined table. In the second column of this table I am showing the law differential of January 1, 1918, computed by the actuarial committee of the National Workmen's Compensation Service Bureau, with the exception of Ohio. I have taken the Ohio differential on just equaling that of New York:

State.	Law differential.	Premium developed by application of current stock company manual rate.	Less 19 per cent to make same comparable with Ohio (excepting difference law differentials).
Pennsylvania.....	1.05	\$25,127,163	\$20,353,002
Delaware.....	.945	28,793,610	23,322,824
Tennessee.....	1.15	30,308,132	24,549,587
New Hampshire.....	.95	30,525,330	24,725,517
Virginia.....	1.16	30,714,470	24,878,721
New Jersey.....	1.01	30,969,310	25,085,141
Maine.....	1.60	31,083,262	25,177,442
Vermont.....	.99	31,220,867	25,288,902
Montana.....	1.00	31,812,237	25,767,912
New Mexico.....	.95	31,856,050	25,803,401
Colorado.....	1.27	32,595,933	26,402,706
South Dakota.....	1.36	34,296,931	27,780,514
Utah.....	1.61	36,080,270	29,225,019
Oklahoma.....	1.27	36,317,243	29,416,967
Iowa.....	1.44	36,516,036	29,577,989
California.....	1.71	36,840,833	29,841,075
Connecticut.....	1.51	37,863,614	30,669,527
Louisiana.....	1.21	40,003,247	32,402,630
Ohio (State fund).....	1.91	30,469,433	1 32,510,885
Rhode Island.....	1.25	40,184,495	32,549,441
Idaho.....	1.38	40,308,652	32,650,008
Kentucky.....	1.50	40,348,090	32,681,953
Michigan.....	1.54	41,644,251	33,731,843
Maryland.....	1.33	41,656,954	33,742,133
Nebraska.....	1.79	44,504,926	36,048,990
Texas.....	1.50	45,404,299	36,777,482
Indiana.....	1.46	45,737,969	37,047,755
Wisconsin.....	1.915	46,670,419	37,803,039
Minnesota.....	1.55	47,572,359	38,534,421
Illinois.....	1.52	47,953,828	38,842,601
Kansas.....	1.47	52,633,123	42,632,830
New York.....	1.91	62,415,380	50,556,458

<sup>1</sup> Plus 6.7 per cent increase to make same directly comparable with stock company rates.

I wish this paper would permit of my going into an analysis of the law differentials that have been established for the smaller industrial States, but this would carry the paper to too great length and out of its proper bounds.

If there are any points I have not made clear I shall be very glad to answer any questions.

I do not know whether I am violating any confidence. In a paper that is to be read subsequently by Mr. Dean, chief statistician of the Ontario Workmen's Compensation Board, I am pleased to note that he has made a computation on a large number of claims, computed precisely on the basis computed by the National Workmen's Compensation Service Bureau, and his computation shows the Ohio law differential slightly in excess of the New York.

Mr. WILCOX. Do you make any difference in occupation and disease cost between New York and Ohio?

Mr. WATSON. No, I do not.

Mr. WILCOX. I do not understand why you go through a long process to find out what the difference is. You know what it costs you to administer compensation in your State. You know what the difference in loading is. You know what the stock companies load for cost. Why do we have to go through this long process in

order to get it? The difference between the cost to insurance companies or to the employer is simply the loading for cost. Is not that all?

Mr. WATSON. Yes.

Mr. WILCOX. I noted this—that you said the average cost was 40 per cent—stock companies loaded 40 per cent. Do they load 40 per cent in New York?

Mr. WATSON. That is my understanding.

Mr. WILCOX. I do not understand it so; I think they are loading 37½ per cent.

Mr. MICHELbacher. I think I could amplify that. Under National Workmen's Compensation rates they would use an expense loading of 37½ per cent if operating in Ohio, and that would be 36 per cent for expense and 1½ per cent for profit, so that would be one point of difference in Mr. Watson's calculations. Now, I assume there will be a discussion later.

Mr. WATSON. Answering your question, I think the statement that you have made is a correct one, and that is, it does simply resolve itself into a matter of the comparison of loadings. And, talking in expressions of percentage, my thought was simply to work out on a basis of theory and on a basis of actual practice these two sets of computations, in order to determine to what degree they actually did check against each other in practice.

Mr. KENNARD. Speaking with reference to a State where business is done solely by the insurance companies without self-insurance and without a State fund or any other form of insurance, the cost of administration to the Commonwealth is a little less than 2¼ per cent of the amount of money liabilities incurred by the insurance companies each year. In short, the legislature appropriates approximately \$115,000. The awards of the board on agreement sent in now amount to close on \$5,000,000. I feel that that cost of administration compares very favorably with any State in the country.

Mr. DEAN. I would like to ask Mr. Watson if his differentials as between Ohio and New York take care of the 1 per cent or more added for special taxes in New York as against Ohio?

Mr. WILCOX. He spoke of that.

Mr. WATSON. I meant to cover that point in my paper; that is, that cost of operating, of supervising the stock companies in their adjustments and in their rates would practically just offset the factor of taxes.

Mr. WILCOX. May I ask Mr. Watson what the gross interest returns are on the fund. I am interested because of this question of the charge of stock companies of 1½ per cent. I would just like to know what the interest returns are on State funds on your premium cost of \$10,000,000?

Mr. WATSON. Our annual interest returns now are about \$700,000—interest earnings of the fund.

Mr. WILCOX. That covers your surplus and all of your reserves?

Mr. WATSON. Yes.

Mr. MICHELbacher. That would not be a charge against one year's premiums.

Mr. WATSON. No; that is correct. Our interest earnings are 4.7 per cent on our deposits and investments.

Mr. MICHELbacher. That would be a very slight percentage on one year's premiums. I mean to say, you collect your premiums and you have to pay a great many of them out immediately, so that your deposits are a comparatively small part of total premium income for any one year.

Mr. WATSON. Our interest earnings on our premiums are 4.7 per cent, and our premium income for the year is a little in excess of \$12,000,000.

Mr. MICHELbacher. Would be 4 per cent on \$10,000,000.

Mr. WATSON. Our interest earnings on our deposits are 4.7 per cent. It is very true that our interest earnings of \$700,000 is not the earnings on the premiums of the single year, but that is the interest earnings on our cumulative deposits, but our average interest earnings are 4.7 per cent.

Mr. MICHELbacher. That would be on your deposits since the inception of the fund?

Mr. DUFFY. Let me give you that frankly: For the year ending June 5, 1919, for the one year the exact income earned on the fund as invested in municipal bonds, etc., amounts to \$725,772.52.

Mr. MICHELbacher. I would like to ask Mr. Watson if he has ever made any effort to check this law differential by actual experience? You know in national rate making in the United States we have largely tested as between two States. It is our practice now to establish what is known as experience differential, and that can be easily accomplished because the official New York experience is available in schedule 3 and you have your own experience in the fund. All you need is: Choose 100 representative cases or more; take the corresponding classification in New York; project that into your Ohio pay rolls, and compare the result expected—your expected losses—with the actual loss in Ohio, and then reverse the process, and take the average, if you please.

I disagree with the statement that the law differential for Ohio was as high as that for New York. According to our calculation it is not. There would be still a difference of considerable amount. I do not say our law differentials are exact, or that they should be taken as a basis for comparison; but I submit it is a very simple matter to determine the question upon the basis of actual facts.

I would say there would be about 10 per cent difference in favor of New York.

Mr. WATSON. Mr. Michelbacher, I have taken the computation basis that I have used here on the basis of the computation of the National Workmen's Compensation Service Bureau, of your own computations, and I of course assumed that in making those computations you would feel to a reasonable degree that they were dependable. I took the differential that you computed for Ohio with the increases made since that time. Mr. Dean has taken the exposure of some 40,000 accidents, and has computed them precisely on the basis of the New York law differential, and has secured results that harmonize directly with my own.

Mr. MICHELbacher. We do not do business in Ohio. Our calculation of the Ohio law of differential is purely an academic matter, but if you will be honestly willing to get at the thing it will be an easy matter to settle this. All you need do is to permit an independent actuary, whom we can choose—Mr. Downey or anyone else—to take the experience of, say, 200 of your most important classifications, your actual classification on experience, and he can compute the law differential, which I shall accept. But I do not propose—I can not possibly accept the statement that the cost of benefits in the two States is exactly the same, or that Ohio benefits cost more than New York benefits.

I did not calculate it myself, but my assistant has calculated it. I have had two assistants. My first assistant calculated the law differential, and my second assistant has recalculated it, taking into consideration the recent slight changes in the amendments to the benefits, using 1917 wages, and she says that her final result is 1.68.

Mr. WILCOX. The bureau has recently calculated it for Wisconsin and fixed it around 1.94; and perhaps another 2 per cent. I know something about the Ohio act and the benefits they pay, and I can not understand—I do not believe that Wisconsin is paying more than Ohio is.

Mr. WATSON. Well, we have made seven sets of computations, one upon the basis of the computation actually made by the National Workmen's Compensation Service Bureau, of which I believe Mr. Michelbacher is a representative; one on the basis of a pure premium computation for insurance in New York as against the pure premium rates of Ohio; and the third is the computation of Mr. Dean, made upon the basis of the computations by which you computed the law differentials of New York. The three tests which have been completed show that the Ohio law differential is higher than the New York differential.

Now, if there is any computation which can be made that will make a fourth test, I will personally very heartily welcome it.

Mr. MICHELbacher. You are willing to submit to that fourth test by an independent actuary?

Mr. WATSON. I am perfectly willing for that to be done on an impartial basis.

The CHAIRMAN. I think that has been settled now.

Mr. HENDERSON. I notice that the New York Stock Co.'s current manual rate is given as 6.3 per cent for coal mining. I want to know if there is any correction to be made in those figures, and why that is made there. I do not know whether you know it or not—6.3 per cent was higher than the mining rate that I had in mind.

Mr. WATSON. I made a footnote; probably you will notice that. I took 125 of the manual classifications under the Ohio plan, largest pay roll exposures, and applied those against the 31 States in which the stock companies computed their rates. Now, it is obvious that, taking 125 classifications, in those 31 States you could not correspond uniformly to all States wherein there would be operations similar in character; but I have taken computations in all but the coal mines. If you notice the footnote there you will see that I made special reference to that point.

COLUMBUS, OHIO, October 24, 1919.

Dr. ROYAL MEEKER,

*Commissioner, Bureau of Labor Statistics, Washington, D. C.*

DEAR SIR: I have just made a revised computation of the first part of my paper on the basis indicated by Mr. G. F. Michelbacher, actuary, the National Workmen's Compensation Service Bureau.

As is noted, in making my original computation I charged the stock companies with an expense and profit loading of 40 per cent for Ohio. Mr. Michelbacher states that if the stock companies really had been permitted to operate in Ohio their expense and profit loading would have been  $37\frac{1}{2}$  per cent. On the basis of the  $37\frac{1}{2}$  per cent loading, therefore, the revised computation would be as follows:

*Private stock casualty insurance companies.*<sup>3</sup>—If the Ohio workmen's compensation act had been in the hands of the private stock casualty insurance companies during the past year, these companies would have charged the Ohio employers compensation rates,  $62\frac{1}{2}$  per cent of which would be to cover "incurred losses" and  $37\frac{1}{2}$  per cent to cover "expense and profit loading."

Assuming the incurred losses of the stock insurance companies the same as those incurred by the Ohio fund, then $62\frac{1}{2}$ per cent of their rate to cover their losses for the past year would be.....	\$10,397,096.
Their remaining $37\frac{1}{2}$ per cent of their rate to cover expenses and profits would then be.....	6,238,258

Therefore, the annual cost of Ohio workmen's compensation act in hands of private stock companies for past year would have been.....	16,635,354
Annual cost of Ohio workmen's compensation act (including cost of operation) in hands of Ohio State fund for past year.....	10,747,096.

<sup>3</sup> For original computation, see pp. 325-333.

338 COMPARATIVE INSURANCE RATES UNDER DIFFERENT SYSTEMS.

Annual increased cost of private stock company system over Ohio State fund, computed on the basis indicated by Mr. Michelbacher, actuary, National Workmen's Compensation Service Bureau----- \$5, 888, 258  
 An increase of 54.8 per cent.

As I indicated when in Toronto, I had the following computation in process but was unable to take the same with me owing to the difficulty I had in securing one set of figures essential to this computation. This computation is as follows:

Name of carrier.	Period covered.	Total incurred losses.	Total incurred expenses.
New York stock companies.....	July 1, 1914, to Dec. 31, 1917.....	<sup>1</sup> \$27, 624, 842	<sup>2</sup> \$15, 388, 964
Ohio State fund.....	Nov. 15, 1915, to Mar. 1, 1919.....	<sup>3</sup> 27, 442, 722	<sup>4</sup> 1, 277, 592

<sup>1</sup> See p. lix, Table IX, New York Insurance Report, Part III, issued by insurance department of New York, 1918.

<sup>2</sup> Expenses and profits.

<sup>3</sup> See p. 25, Table III, Report of Actuarial Audit of Ohio State fund, by Examiners Downey and Dawson.

<sup>4</sup> Taken from official records of cashier-paymaster's department of the commission.

That is, it cost the New York employers \$15,388,964 to secure from the stock companies \$27,624,842 in workmen's compensation benefits for their disabled workmen and dependents; whereas, the Ohio State fund, at a cost to the State of but \$1,277,592, provided the Ohio employers \$27,442,722 in workmen's compensation benefits for their disabled workmen and dependents.

Expressed in other terms, for \$15,388,964, the Ohio plan would have provided the New York employers \$330,556,101 in workmen's compensation benefits for their disabled workmen and dependents, as against the \$27,624,842 in compensation benefits provided by the New York stock companies at this same cost; whereas, for \$1,277,592, the stock companies would have provided the Ohio employers \$2,293,415 in workmen's compensation benefits for their disabled workmen and dependents, as against the \$27,442,722 provided them by the Ohio State fund at this same cost.

Owing to the requirements of my work I had but a few days within which to prepare my paper, and in its preparation I inadvertently overlooked giving New York the benefit of a minor credit to which it is legitimately entitled; viz, a credit for occupational disease loading, which loading New York computes at 1 per cent. Though I have not made an exact computation I believe it is safe to assume, however, that this 1 per cent occupational disease loading for New York is easily overcome by the minimum premium differential existing between the Ohio and the New York plan, wherein the Ohio plan prescribes no minimum premium, whereas the stock companies in New York prescribe minimum premiums, the lowest being \$11 and ranging up to a maximum of \$229.

By referring to that heading of my paper entitled, "Comparison between rates of the Workmen's Compensation Insurance Stock Co., of New York, and of the Ohio State Insurance Fund," it will be noted from the third and fourth paragraphs of the same that my computations of the comparative scale of benefits of the New York and Ohio acts were predicated primarily upon the officially printed figures of the National Workmen's Compensation Service Bureau. It is most unfortunate, and certainly no little surprise, to discover that Mr. Whitney and Mr. Michelbacher themselves, who are directly responsible for their existence, now repudiate these figures of the bureau.

I understand that the National Workmen's Compensation Service Bureau did compute an Ohio law differential for the War Department in July, 1918, and placed the same at 1.67.

Now, by what process of computation the bureau accomplished this, when, in January, 1917, their computation made for Ohio produced a differential of 1.70, is not clear; particularly in the face of the fact that between January, 1917, and July, 1918, the death benefits of the Ohio law were increased 33 $\frac{1}{3}$  per cent, the \$200 maximum on medical and hospital was entirely removed, and the medical and hospital fee schedule was greatly increased. In other words, it is scarcely mathematically possible to reduce a workmen's compensation State law differential by the process of increasing the scale of benefits of that law.

It happens that the July, 1918, Ohio law differential computed by the bureau for the War Department was made at the end of a particular experience which the stock companies had with the Government. Their cantonment construction experience was as follows:<sup>4</sup>

EXPERIENCE FROM APRIL, 1917, TO MAY 10, 1918.

[From American Federationist, January, 1919, p. 48.]

State.	Earned premiums collected by stock companies from Federal Government.	Total incurred losses.
New York.....	\$121,588	\$17,642
Virginia.....	226,611	16,729
Arkansas.....	155,402	14,902
Michigan.....	102,948	12,945
Texas.....	264,420	76,095
New Jersey.....	178,577	51,378
Maryland.....	143,856	36,010
Kansas.....	121,568	13,877
Illinois.....	155,990	39,236
North Carolina.....	55,765	3,505
Georgia.....	75,007	6,093
Alabama.....	66,400	5,761
South Carolina.....	180,382	9,242

It is obvious from the foregoing that any law differential derived in relation to an experience of the foregoing character would scarcely be applicable to the general industrial and contracting risks of Ohio.

Now, I have no hesitancy in saying that, in the abstract, the New York law, in my judgment, prescribes a scale of benefits as high as that prescribed by the Ohio act; but I do not consider that the injured workmen of New York and their dependents are actually provided as much compensation as is provided the injured workmen of Ohio and their dependents under the Ohio act; this, for the very direct reason that the Ohio workmen and their dependents are getting the full compensation to which they are entitled under the Ohio act. In New York they are not. For instance, see pages 12, 40, and 41 of the Downey-Dawson "Actuarial audit of the Ohio State insurance fund," made as of March 1, 1919.<sup>5</sup>

<sup>4</sup> This was the only experience furnished the Government by the stock companies.

<sup>5</sup> Evasion of payment for these sadly serious impairments, under the New York law, which had provided for direct settlement and still permits this public matter to be handled, for the most part, through private insurance companies, was recently shown up in an investigation of the operation of the law in that State; but the proportions of such evasion are plainly indicated by the much greater ratio of such payments by the Ohio State fund for this compensation, than in Pennsylvania or New York.

Careful scrutiny of several thousand claim records with the foregoing criteria in view failed to disclose any evidence of the denial of compensation by the Ohio fund on over-

The foregoing result is for the simple reason that the Ohio State fund, being on an exclusive basis, has but a sole motive and incentive—viz, to see that each and every claimant gets precisely that to which he is entitled under the terms of the act, thereby eliminating those vital elements possessed by the New York Workmen's Compensation plan, which from the viewpoint of public policy are so detrimental and destructive to, and certainly have no place in, any workmen's compensation act. I refer to the element of cutthroat competition, professional claim agents trained under and obsessed with the employers' liability régime, and the element of profit, thereby providing every temptation for the evading of payment and short changing of claims of those disabled workmen and dependents wholly unfamiliar with their rights.

The results of the January, 1917, law differential computations of the National Workmen's Compensation Service Bureau show that the Ohio workmen and their dependents are now receiving more compensation than the injured workmen of New York and their dependents. Not only a direct comparison of New York and Ohio pure premium rates, but also a comparison of broad average claim cost, indicates this same result. In fact, all evidence available thus far points to this same result.

I learn that the Workmen's Compensation Service Bureau computed a still later law differential than the one of July, 1918, and fixed the same at 1.68. Though I have written the bureau direct I have not as yet secured a statement from it indicating whether or not this later differential was computed on a

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strained or technical grounds. On the contrary, there was a manifest intention on the part of the industrial commission, which administers the fund, not indeed to transcend the limits of the law, but to deal fairly and even liberally with claimants. This spirit is perhaps best shown in the treatment of permanent partial disabilities not covered by the specific indemnity scale.

Specific indemnities, which form so distinctive a feature of American compensation acts, are almost always paid in full. The case is quite otherwise with that large class of permanent disabilities due to impairment, as distinct from total loss, of members. These disabilities are compensable, as a rule, on the basis of loss of earnings. But impairment of earnings is often difficult to establish and still more difficult for an administrative board to follow up in those jurisdictions where claim settlement rests with the employer or his insurer. In these jurisdictions, accordingly, the number of such injuries compensated for the loss of earnings bears no reasonable proportion to the number that actually occurs. The experience reported to the Pennsylvania insurance department, e. g., reveals barely 1 case of impairment to 12 cases of loss of member. Experience in the State of New York is not widely different. The Ohio fund, per contra, has paid compensation in a larger number of cases, and in greater aggregate amounts, for impairments of hand, arm, leg, and foot than for outright loss of these members.

The like spirit is manifested in the medical follow-up of serious injuries. In almost every case of long-continued disability the claim folder contained a recent detailed medical report. Medical examination had been set in several hundred cases wherein compensation had been suspended before the last report showed earnings equal to the wages of the injured at the date of injury. The practice, indeed, is to reexamine every case of severe injury twice yearly until disability has wholly ceased or has been pronounced incurable. In a large proportion of these cases there is a record of expensive operative procedure and prolonged hospital care.

Evidence to the same effect is afforded by the small number of claims for compensation rejected by the commission and the small proportion of appeals from decisions of the commission denying compensation. During the 12 months ended March 1, 1919, compensation was awarded for more than 50,000 accidents and disallowed on only 978 claims. On June 1, 1919, only 110 court appeals were pending—the majority whereof were on account of accidents that occurred more than a year before. Stated in percentages, the commission disallows two claims in every hundred and the disappointed claimants appeal from 5 per cent of such decisions.

From the standpoint of full payment, then, this examination discloses no ground of criticism. The industrial commission, in its final disposition of claims, appears to be giving full effect to the compensation act.

basis similar to that by which it computed its January, 1917, Ohio law differential.

But it is not at all clear just why the National Workmen's Compensation Service Bureau has been spending so much time experimenting on computing a law differential for Ohio, since the 1917 session of the Ohio General Assembly prohibited these companies from further writing workmen's compensation in Ohio. The bureau will not claim, of course, that any workmen's compensation law differential that it computed at any time for Ohio was ever taken seriously by the stock companies or ever given serious consideration by the stock companies in the actual workmen's compensation rates they really applied in Ohio. In point of fact, given agents of the stock companies prior to the prohibitory legislation enacted by the 1917 Ohio General Assembly above referred to, in their eagerness to make inroads into the business of the Ohio State fund, not only went to the Ohio employers and offered to write their compensation business at precisely the same rates promulgated by the Ohio fund, but further offered to provide Ohio employers an open liability protection which the Ohio State fund could not provide, and which the supreme court of the State ruled the stock companies could not provide. I do not know to what extent the main offices of these agents really dominated this practice of their agents, inasmuch as the degree of the impotency of the home offices to dominate or control the acts of their agents in the workmen's compensation insurance field is notorious.

Aside from the foregoing, however, that which should give grave concern to the National Workmen's Compensation Service Bureau, from the viewpoint of conserving the interests of the stock companies, happens to be the very thing which they now find themselves actually to have conceded—namely, that making the computation on the basis indicated by Mr. Michelbacher himself, who is the chief actuary of the bureau, shows that the stock company plan, if now operative in Ohio, would have imposed an annual cost in excess of that required by the existing Ohio State fund of \$5,888,258.

I request that you publish this communication in conjunction with that part of the proceedings of the Toronto convention which deals with my paper.

Very truly, yours,

EMILE E. WATSON, *Actuary.*

The CHAIRMAN. The next paper is that by Mr. Carl Hookstadt, expert, United States Bureau of Labor Statistics, entitled "Tests of efficiency in compensation administration."

Mr. HOOKSTADT. My paper is in print and I will not read it now; simply emphasize two or three points in there.

## TESTS OF EFFICIENCY IN WORKMEN'S COMPENSATION ADMINISTRATION.

BY CARL HOOKSTADT.

Workmen's compensation laws have been in effect in the United States for eight years. The time is now ripe for a careful examination into the merits and alleged beneficent results of these laws. Are they having the effect anticipated? Have they reduced accidents? Have they restored the industrial efficiency of injured workers and increased their opportunities for employment? Have they bettered the social and economic conditions of the dependents of those killed through industrial employment? By what means has this been accomplished? What type of administration and insurance has proved most efficient?

Unfortunately few of the compensation commissions have made an intelligent study of their own laws. They do not know not only what other States are doing, but even what they themselves are accomplishing. Most of the commissioners' time and energy is consumed in hearing and deciding cases. Have accidents been reduced? They do not know and many apparently do not care. Are injured employees receiving the compensation benefits provided for in the law? They do not know. Are employees receiving their payments promptly? They do not know. What becomes of the permanently crippled workers? They do not know. How long are such workers disabled? They do not know. What disposition is ultimately made of the commutations and lump-sum settlements? They do not know. What becomes of the widows and other dependents? They do not know. What type of insurance carrier furnishes the best service? They do not know.

As a result of numerous requests from State legislatures and others for data on the relative merits of different types of compensation and insurance systems the Bureau of Labor Statistics has undertaken an investigation of this subject. This study has a two-fold purpose: (1) To compare the different types of administration as to cost, security, and service; (2) to compare the several types of insurance systems, applying the same tests. Inasmuch as the Bureau has just begun its investigation it would manifestly be unfair and undesirable to give out preliminary data. Results from only two or three States are not only inconclusive, but may possibly lead to erroneous conclusions. Under the circumstances this paper

will be limited to the tests, standards, or criteria by which the success of a compensation act may be measured. The justice or appropriateness of these tests can hardly be disputed. The writer hopes, therefore, to be pardoned if the remarks herein border on the obvious and appear somewhat dogmatic.

#### COST.

The first question to consider is that of cost—cost to the employer, the employee, and the State.

*To the State.*—The compensation costs borne directly by the State involve several factors. Oregon is the only State which pays a part of the actual compensation benefits, one-eighth of the total cost being contributed by the State. Under all of the laws, however, the State bears a portion of the administrative expense. This administrative expense ratio varies, depending upon the kind of administrative agency provided, upon the type of insurance system, and upon the law itself. In those States which have no administrative boards or commissions<sup>1</sup> the cost is small, practically nothing in some States. This expense increases with States having compensation commissions, and reaches its maximum in the States having exclusive State funds. The extent to which the State bears the administrative expense of State funds depends upon the law of the particular State. In some States it is borne by the State, while in others such expenses are taken care of in the premiums, and therefore borne by the employers. To compare accurately, therefore, the administrative costs of an exclusive State-fund State like Ohio with an exclusive private-insurance State like Massachusetts, it would be necessary in the case of Massachusetts to include the administrative expenses of the insurance companies. Then, too, in every case the expenses should be correlated with the service rendered. A high expense ratio may not necessarily mean extravagance or waste if the service is commensurate with the expenditures.

To what extent the State should bear the expense of administration is an unsettled question. It was apparently intended that the employer primarily should bear the burden of compensation costs. But should this include administrative expenses? Under the private insurance carrier system employers do bear directly a large share of the expense of administration, since the express ratio is one of the factors determining the size of the premium rates. Where administrative expenses are paid out of appropriated public funds employers are to this extent relieved of the cost. It may be argued that the incidence of cost is immaterial in any event, since the ulti-

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<sup>1</sup> Alabama, Alaska, Arizona, Kansas, Louisiana, Minnesota, New Hampshire, New Mexico, Rhode Island, and Tennessee.

mate consumer or public pays the bill by virtue of increased cost of the product. This the writer is not at present prepared to discuss.

*To the employee.*—Ohio, Oregon, and West Virginia have been the only States requiring employees to pay a part of the compensation costs. In Ohio and West Virginia employees were required to contribute 10 per cent of the cost; in Oregon 1 cent for each working day. Ohio and West Virginia, however, have abolished this provision—the former in 1914 and the latter in 1919. Moreover, in a number of the Western States the compensation laws specifically authorize employers to make contracts with their employees for medical and hospital service. Employees generally are required to contribute \$1 a month for the support of this service, which usually covers sickness as well as accidents. One criticism against this contract system is that the cost of the medical benefits under the compensation law—a burden it was intended for the employer to assume—is shifted to the employees. It is maintained that the employees' contributions more than defray the entire cost of the service.

In discussing the relative burden borne by each party under compensation acts the distinction between compensation costs and accident costs should be kept in mind. In no State does the employer pay the whole cost of industrial accidents. In fact, in most States he bears less than one-half the cost, and in some States only about one-fourth. The cost of industrial accidents is borne by the employees in so far as the statutory compensation benefits fail to cover the loss of earnings resulting from the accident. Certain other factors should also be taken into consideration, such as medical costs for which the employer is not liable under the act, and the expenses entailed in the process of procuring the compensation benefits. Frequently a considerable portion of the compensation is dissipated in attorneys' fees, witnesses' fees, traveling expenses, and legal procedure. These matters will be discussed more fully under service.

*To the employer.*—Although the employees and the State pay a part of the cost, the real burden of compensation costs, as distinguished from accident costs, is after all borne by the employer. The cost to an employer of a given number of accidents depends upon two factors: (1) Liberality of compensation and medical benefits, and (2) the type of insurance. Since the insurance rate is made up of the two factors, pure premium or loss cost and expense loading, and since the expense ratio varies with the type of insurance the effect of the latter upon insurance rates and therefore upon the cost to the employer can readily be seen. However, inasmuch as this subject will be discussed by others I shall not go into the matter. Suffice it to say that, irrespective of service, the cost to employers under the several types of insurance runs in about the following

descending order: (1) Private stock companies, (2) private mutuals and competitive State funds, (3) exclusive State funds, (4) self-insurers.

#### SECURITY.

The question of security is important to the employer, but especially so to the injured employee. When an employer in good faith insures his risk in a responsible authorized insurance company he should be protected against further liability. But, on the other hand, the employee should not be deprived of his compensation benefits through or because of the insolvency of the employer or the insurance carrier. The employee's interests are paramount and should be given first consideration.

Compensation laws provide various methods for securing or protecting the employee's compensation benefits, some of which are entirely inadequate and unsatisfactory. In all but six States<sup>2</sup> insurance is compulsory, but unfortunately in many of these States the law provides no penalty for failure to insure except that the employee may sue for damages with the employer's defenses removed. A judgment awarding damages is of little service to the employee if the employer is insolvent.

Broadly speaking, four types of insurance are provided—namely, (1) Private insurance carriers, either stock (nonparticipating) or mutual (participating); (2) competitive State funds; (3) exclusive State funds; and (4) self-insurance. In most cases the employers have the option of several kinds of insurance. This does not hold true, however, of States having exclusive funds. In these States, except Ohio and West Virginia, no other form of insurance is permitted. Another form of security in most of the laws is the provision making compensation payments a preferred claim or lien against the property of the employer. In fact, this is practically the only security possessed by employees in the noncompulsory insurance States.

*Stock or nonparticipating insurance carriers.*—The security or solvency of private stock companies depends, first, upon adequate insurance rates, and, second, upon adequate reserves. Both should be under the strict supervision and regulation of State insurance departments. No company can long maintain its solvency with inadequate rates. Under stress of cutthroat competition the temptation to reduce rates below the safety level becomes too great to resist. State regulation is necessary to maintain the solvency of the insurance carrier and to protect the compensation rights of injured employees. But notwithstanding these obvious facts nearly one-half of the compensation States make no provision for rate regula-

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<sup>2</sup> Alabama, Alaska, Arizona, Kansas, Louisiana, and Minnesota.

tion. Small wonder, then, that such a state of affairs has resulted in several disastrous failures during the past two or three years. The failure of such companies as the Guardian Casualty & Guaranty Co. of Utah, the Casualty Co. of America, and the Commonwealth Bonding & Insurance Co. of Texas resulted in thousands of dollars of unpaid compensation claims. The Guardian Co. operated in 15 States and the unpaid claims in Montana alone amounted to \$75,000. In those States in which the law held both the employer and insurer individually liable these losses had to be met by the employers. In other States in which employers are relieved of further liability when insured, the injured claimants were the sufferers. The legislature of California appropriated between \$60,000 and \$70,000 of public money to pay in full the larger claims of injured employees because of the bankruptcy of the Commonwealth Bonding & Insurance Co. of Texas. Many smaller claims have not yet been taken care of. Such is the security record of private stock insurance companies. Whether the State should, as maintained by some, either guarantee the solvency of insurance companies authorized to do business or make good the losses directly out of the State treasury where such insolvency is due to lax insurance laws or their administration, may be questioned. By no means, however, should the injured employee be permitted to suffer.

Coincident with the regulation of rates there should be supervision over reserves. Rates may be adequate to maintain solvency under normal conditions. But a long period of excessive losses or a catastrophe resulting in hundreds of fatalities may endanger the solvency of a carrier unless sufficient reserves have been maintained. What constitutes adequate reserves depends upon the nature of the risks and other factors. They may vary from 65 per cent of the previous year's losses to 100 per cent of the premium.

*Mutual or participating carriers.*—The provisions as to the adequacy of rates and reserves for stock companies apply also to mutuals. In certain States, however, mutual companies because of their lower expense ratio are allowed to issue rates lower than those demanded of stock companies. As to the advisability of this practice insurance actuaries differ. Employers insured in mutual companies, however, are subject to assessment in the event that the losses exceed the premiums. The mutual plan therefore seems to offer a greater degree of security to the employee and a less degree to the employer. No large mutual company has failed as yet.

*State funds.*—State funds are of two kinds—competitive and exclusive. There are now in existence eight<sup>3</sup> exclusive funds and nine<sup>4</sup>

<sup>3</sup> Nevada, North Dakota, Ohio, Oregon, Porto Rico, Washington, West Virginia, and Wyoming.

<sup>4</sup> California, Colorado, Idaho, Maryland, Michigan, Montana, New York, Pennsylvania, and Utah.

competitive funds. The provision as to rates and reserves applicable to private companies should also apply to State funds. In some of the States the employer, when insured in the fund, is relieved of all further liability. The fund therefore becomes the employee's sole protection. Nor does any State having such a fund assume liability in case of the fund's insolvency. On the contrary, some of the States specifically disclaim liability beyond the amount of the fund. Since no State fund has as yet become insolvent the policy of the State as regards compensation claims in the event of the fund's insolvency can not be ascertained. However, its probable attitude may be seen from the experience in California, where, as already noted, the legislature of the State appropriated over \$60,000 to pay claims resulting from the bankruptcy of a private insurance company.

Some of the competitive funds are not required to and do not report their experience to the State insurance department as private companies must. There seems to be no well-founded reason why State funds should not be subjected to the same regulation as other insurance carriers. It is maintained, however, that because their right to reject undesirable risks is circumscribed by law, State funds should have greater freedom than private insurance companies with respect to rates. It is further contended that the power of supervision over rates, if exercised by a hostile insurance department, could hamper if not actually put a State fund out of business.

*Self-insurance.*—Practically all of the compensation States, except those having exclusive State funds, permit employers to carry their own risk, subject to such safeguards as the law may prescribe. About one-half of the compensation laws require self-insured employers either to furnish proof of solvency or to deposit such security as is required by the compensation commission or insurance department. In the other States they must deposit security in addition to furnishing proof of solvency. In several States employers are also permitted to insure their risks in authorized guaranty companies.

Experience as to self-insurance has been reported to the Bureau by the compensation commissions of 21 States. In 15 of these States no self-insured employer has failed or gone into the hands of a receiver. Three States reported one failure each and one State reported two failures, but in all cases the compensation claims were paid either by the receiver or through security which had been deposited. Only two States reported failures—one small concern in each State—which resulted in several claims being unpaid. Several exceptionally disastrous accidents were reported. Three severe catastrophes occurred in Pennsylvania, two of which resulted in over 100 fatalities. Compensation losses were paid in full in every case.

While the security record of self-insurers has been excellent this favorable experience may be due in part to good fortune or pure

chance. It is also quite possible that compensation commissions are not always cognizant of every failure of self-insured employers, because such failures may not be reported to them. This was actually the case in Illinois. In such cases the injured claimant usually consults an attorney, who takes the matter before a bankruptcy court and the commission remains in ignorance of the facts.

The filing of a mere financial statement showing assets and liabilities is an insufficient guaranty of ability to meet long-continuing payments or to withstand a catastrophe successfully. The financial statement of a Wisconsin self-insurer showed net assets of \$5,000,000, yet the concern shortly afterwards went into the hands of a receiver. Self-insured employers should also be required to deposit sufficient security to meet all reasonable compensation obligations. Such security may be furnished in various ways: Deposit of cash or bonds; surety bonds; reinsurance; requiring employers to set up reserves; purchase of annuities or trust funds in case of death or permanent disability awards. Reinsurance is frowned upon in some States. Wisconsin, for example, prohibits self-insurers from taking "deductible average" insurance policies because there exist no reliable data upon which premium rates may be based. In Colorado, on the other hand, employers in the more hazardous industries are required to reinsure losses over \$25,000 to \$150,000.

There seems to be no legitimate reason why self-insurers should not be subject to the same supervision and regulation as to security and reserves as are imposed upon the regular insurance carriers. The industrial commissions should have full authority to grant, refuse, or revoke permission to self-insure, if satisfactory cause is shown. This discretionary power should include, in addition to questions of solvency, such matters as the employer's attitude toward safety, settlement of claims, discrimination against cripples, etc.

*Noninsurance.*—Another important problem is the failure of many employers to insure their risk under the compensation act. Even in the compulsory insurance States hundreds of employers fail to insure. Most of these are small concerns—stores and the like. Some are extrahazardous employment which the commercial carriers would not insure, such as window cleaners, fishermen, junk dealers, and so on. It has even been found necessary to permit such employments to carry their own risk. The State should provide facilities for insurance for every employer subject to the compensation act and then penalize heavily those employers who fail to insure. The usual penalty of allowing the employee to sue for damages with the employer's defenses removed is useless in case the employer is insolvent. Every State commission should have on file a list of all the employers under the act, together with their insurance records. This is not an

impossible task. Usually, however, the commission's first knowledge of an employer's noninsurance is when an accident claim is presented.

#### SERVICE.

The real test of the merits or efficiency of a compensation administrative or insurance system is the quantity and quality of service furnished, service to the employer but particularly service to the employee. The principal tests of service are accident prevention, just compensation awards, promptness of payments, minimum of time and expense in adjudicating contested cases, aid given claimants in obtaining their compensation, medical aid and supervision, and care of the permanently disabled.

*Accident prevention.*—Probably the greatest weakness of compensation laws in the United States is the lack of correlation between compensation administration and accident prevention. Effective prevention of accidents depends largely upon a knowledge of their causes, frequency, and nature. A compensation commission, in the very nature of things, is the most effective agency for enforcing the reporting of accidents. Furthermore, the problem of accident prevention is intimately connected with the whole theory and system of compensation. It would seem, therefore, that this important work would logically be undertaken by the same agency that administers the compensation provisions. As a matter of fact, however, in only nine<sup>5</sup> States are the compensation commissions made directly responsible by law for accident prevention work. Probably a majority of compensation commissioners are lawyers, at least a majority of the chairmen are. It is the legal and judicial aspect of compensation in which they are chiefly interested. They combine the functions of a claim agent with those of a court. They regard safety work as outside their jurisdiction and consequently of no concern to them. Sometimes they even unconsciously come to feel that they have a vested right in industrial accidents, and point with pride to the large amount of compensation paid to injured workmen. One State official spoke with enthusiasm of the large number of accidents in his State—many more than in a neighboring State—as much as to say, “See how important we are.” I wish it were possible to diminish the importance the average commission attaches to judicial matters and measure the success of its administration in terms of accident reduction.

*Accident and compensation statistics.*—Probably the most lamentable weakness of compensation administration is the want of reliable statistics. Many of the commissions have no statistical depart-

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<sup>5</sup> California, Indiana, Montana, New York, North Dakota, Ohio, Utah, Vermont, and Wisconsin.

ment at all and in others it is not taken seriously. Although the statistical committee of this association has accomplished excellent work in standardizing statistical forms and methods and in awakening an interest in the importance of accurate and comparable statistical data, many commissions are still unconvinced as to its value. They are so immersed in "cases" and so concerned with immediate problems that they have lost sight of both direction and purpose. A modern business organization to-day with no bookkeeping and cost-keeping department is unthinkable, yet the average compensation commission is just such an establishment. It would seem that mere curiosity, if nothing else, would prompt a commission to ascertain the results of the operation of the law.

Every commission should make an analysis of its accidents by industry, cause, nature and extent of disability; it should be able to compute accident frequency and severity rates; it should know whether and what kind of accidents have been reduced, to what extent, in what industries it should compute and analyze the cost of accidents—in fact, it should furnish data which could be used for the determination of insurance rates; it should know the promptness with which compensation payments are made; it should investigate each lump-sum settlement and tabulate the results; it should know what becomes of the permanently disabled; it should ascertain the functional and occupational incapacity resulting from different kinds of permanent injuries; it should ascertain whether and why crippled men are discriminated against; it should know the number of second injuries; it should know what ultimately becomes of the widows and other dependents; it should know the length of time involved in the adjudication of cases; it should be able to compare and contrast the kind of service furnished by different types of insurance carriers. Unless these facts are known it is not only impossible to compare different types of laws but also impossible to measure the success of any law.

*Just awards.*—It will probably never be possible to insure absolutely just compensation to every injured employee; surely it will be impossible unless the commission personally investigates each case, which would greatly increase the administrative expense and would probably decrease the promptness of compensation payments. In passing it may be pointed out that the recent investigation made by Mr. J. F. Connor into the operation of the New York voluntary agreement system should not militate too strongly against the industrial commission of that State. Undoubtedly a similar investigation of practically every other State would show similar results. There are, however, certain methods by which instances of underpayment may be reduced to a minimum. A complete report of every

compensable accident should be made promptly to the commission. Supplementary reports should be made at stated intervals thereafter and until the injured man returns to work. In all permanent disabilities and other serious injuries a physician's report should be required. All fatalities and doubtful cases should be investigated. Injured employees should be advised of their rights and some expression from them as to the facts in the case is desirable. This is obtained to some extent when voluntary agreements or initial and final settlement receipts are required. It is a serious mistake to assume that the employee is familiar with his compensation rights or knows how to obtain them. It is particularly dangerous to receive all reports from one party because it does not permit a comparison or checking up as to accuracy. It is preferable that the first report of the accident be made directly by the employer to the commission. Every settlement or agreement should be carefully checked with the employer's and physician's reports. A special follow-up system should be provided for injuries which may possibly cause permanent disability or impairment of function.

*Prompt payments.*—Few commissions keep any record or have accurate knowledge of the promptness with which compensation payments are made and many have no way of obtaining this information. The opportunity to check up the practices of the different insurance carriers and to ascertain the operation of the law in this respect has been sadly neglected. The date of the first compensation payment should be reported to the commission in every case. Obviously a final settlement receipt should also be required. The number of receipts required between the initial payment and final settlement is less important. Some commissions require weekly or biweekly; others monthly or quarterly; some do not demand receipt, but require the employer or insurance carrier to report periodically that payments have been made. It would seem that a monthly receipt or statement would be sufficient.

*Commutations or lump-sum settlements.*—Practically every commission states that it is opposed on principle to the granting of lump-sum settlements. Yet the records show that hundreds and in some States thousands of such lump sums are granted annually. Now, the policy of granting such settlements is either desirable or it is not. If it is desirable it should be encouraged, but if undesirable it should be abolished. Unfortunately most of the compensation commissions have not kept tab on their lump-sum cases and therefore are not in a position to know whether or not the system is desirable. A few commissions have investigated the results of lump-sum grants—some making a thorough study, others a more or less superficial one. The Massachusetts board, which has been keeping

track of its commutation cases, has about reached the conclusion to abolish the lump-sum system entirely. Other States, on the other hand, seem very well satisfied with the lump-sum system.

When all interests concerned are in favor of a lump-sum settlement it is easy for the commission to follow the line of least resistance and grant it. The injured employee always wants such a settlement; the employer, insurer, attorney, and commission are also benefited thereby, because it wipes the case off their books and consequently reduces expense and eliminates a lot of bother. Before granting a lump sum the commission should thoroughly investigate each case. A record, showing the amount granted, the nature of the injury, the circumstances of the employee, and the purpose for which the award is granted, should be kept of every case. A yearly investigation of each case should be made and the result recorded.

*Expense to employee.*—Injured employees are entitled to the benefits provided by the compensation act without being subject to unnecessary expense in obtaining them. Care should be taken by the commission to see that compensation benefits are not frittered away in attorneys' fees, witnesses' fees, doctors' fees, traveling expenses, etc. Hearings should be held at such times and in such places as are most convenient to the employee. The avarice of attorneys should be curbed by curtailment of fees. The employee's rights should be secured and guaranteed without making it necessary for him to engage attorneys. The Pennsylvania board is to be commended in this respect. This board in its Philadelphia office has a special attorney (an employee of the board) to look after the interests of claimants who can not afford to hire a lawyer. This special attorney investigates the circumstances, prepares the case, subpoenas witnesses, and represents the claimant before the referee. If he is not satisfied with the referee's decision he appeals the case to the board. He also represents the claimant in commutation cases, and looks after the appointment of guardians in case of minor dependents. This feature of the Pennsylvania administration might well be copied by commissions in other States. It is desirable also to have the judicial procedure as simple and as free from technicalities as possible.

*Stoppage of compensation payments.*—When to permit the employer or insurer to stop compensation payments in disputed cases is another important matter. In Massachusetts the insurer can not stop payments until ordered by the board. In Pennsylvania he must continue payments until he files a petition for determination; thus he is required to take the initiative. In Wisconsin and Illinois the employer may stop payment any time he desires, in which case the employee is required to take the initiative and bring the matter before the board. Also some States provide a penalty in case of

unreasonable delay or in case suits are brought or defended on unreasonable grounds.

*Care of the permanently disabled.*—Until recently the welfare of workers permanently injured in industry has been criminally neglected. Disabled workers have been paid their compensation benefits, and then allowed to shift for themselves exactly as they had done prior to the enactment of compensation laws. Fortunately the war focused attention upon the problem. In the attempt to restore the war cripple the plight of the industrial cripple was also brought into relief. Massachusetts was the first State to provide for a rehabilitation department in 1918; since then California, Illinois, Minnesota, New Jersey, and Pennsylvania have followed suit. It is to be hoped that every disabled workman will not only be paid the statutory compensation benefits, but also be functionally restored as far as possible, retrained, and replaced in desirable employment.

Probably the greatest handicap suffered by crippled workers is the discrimination against their reemployment. In so far as the compensation act is responsible for this discrimination it should be immediately amended. If the employer is required, under the law, to pay compensation for total permanent disability in case of a second major injury he will feel considerable apprehension about employing one-eyed, one-armed, or one-legged workmen. On the other hand, if the employee is to receive compensation for the loss of one member only, regardless of the resulting disability and loss of earning capacity, he will be inadequately compensated and the purpose of the compensation will be partially defeated. The remedy lies in the adoption of the special-fund plan already in operation in eight States.<sup>6</sup> This plan provides that in case of a second major disability the employer shall be held liable only for the second injury, but the injured employee shall be compensated for the disability resulting from the combined injuries. The additional compensation for the extra liability is paid out of a special fund. Thus substantial justice is insured to both employer and employee, and one potent factor of discrimination is removed.

Every commission should keep track of its permanent disability cases. In the first place it should know the length of the healing period or functional incapacity of every permanent injury. It should also know what effect the injury has had upon the employee's wages, upon his change of occupation, and upon his opportunity for reemployment. It should ascertain the actual loss of earning capacity, and in the light of this information, recommend changes in the compensation schedules.

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<sup>6</sup> California, Minnesota, New York, North Dakota, Ohio, Oregon, Utah, and Wisconsin.

*Medical service.*—Although there has been a great increase in medical benefits in recent years, unfortunately the medical service in many States is still shamefully inadequate. Though handicapped by statutory limitations the commissions should, nevertheless, see to it that the injured workmen receive the best service possible. The establishment of medical departments within the commission seems to have proved universally beneficial and desirable. The commissions should try to establish statistically what effect quality of service and selection of physicians have in reducing the period of disability and decreasing the number of permanent disability cases. It should also try to ascertain the medical cost of accidents by nature of injury.

Dr. MEEKER. Can you give us any figures on the occurrence of second injuries?

Mr. HOOKSTADT. I made a computation for the Bureau of Labor Statistics several months ago on the probability of an industrial cripple sustaining a second injury, which was published in the March, 1919, number of the Monthly Labor Review. It is difficult to determine the number of such second injuries because of insufficient accident data. In this computation I used the Wisconsin accident statistics because they were the most reliable. I found that in Wisconsin the number of second major injuries was one a year; that is, of the total number of workmen under the compensation act who had lost a hand, arm, foot, leg, or eye only one would suffer a second major permanent disability in any given year. Applying the Wisconsin rate to the 41 compensation States gives an annual grand total of 39 second major disabilities for all industries covered by the compensation laws. I also worked out what the additional cost would be for such injuries and I found it was less than three-tenths of 1 per cent; that is, the adoption of a plan similar to the one in New York would increase the total compensation cost only three-tenths of 1 per cent. These figures have been corroborated by actual experience in California.

Mr. WILCOX. It may be interesting to know that the Wisconsin amendment covered, in addition to second injuries, the case of a man who sustains injuries to both members in one accident, having a schedule allowance, and fixing, for example, for one eye at 140 weeks. If the man sustained injury to both eyes he would not be getting a sufficient amount of compensation on the relative injury basis, because you have to base it on 140 weeks, and that is too low a base, and we covered that too; and the charge we are carrying into our insurance rates for the fund is nine-tenths of 1 per cent.

Dr. MEEKER. Perhaps the commissioners would be interested to get that issue of the Monthly Labor Review. Do you recall the issue in which your article appeared?

Mr. HOOKSTADT. The March number of this year. I also prepared an article on the methods provided for in the various State laws for compensating second injuries. This is contained in the July, 1919, number of the Monthly Labor Review.

Mr. VERRILL. I would like to ask you one question about that frequency rate that you speak of. Was the test made in States in which the compensation act was such that there would be no discrimination against cripples? Unless you made such a test as that the result would be entirely misleading. If you made that test from Wisconsin figures at a time when Wisconsin did not compensate those second injuries, the result would be misleading, because as you have assumed in your explanation there would have been discrimination against the employment of crippled men, and therefore there would not be a normal exposure.

Mr. HOOKSTADT. It is probably not feasible to explain in detail the methods by which I computed the frequency rates; it is very involved, and many factors had to be taken into consideration. I think the method I adopted, though theoretical, is correct and justifiable. For a detailed explanation I must refer you to the article in the Monthly Labor Review.

Dr. MEEKER. My only object in bringing this out was to call the attention of the commissioners to the fact that such an article exists, and if they are interested in this highly important subject, write me, and if you have not the Monthly Labor Review I will be glad to send it to you. We will get more information on this subject in a short time and we will get a more accurate result.

Mr. HOOKSTADT. Another matter I wish to touch upon briefly. We have heard much these days about the insolvency of State funds. If a State fund should become insolvent, no State assumes liability beyond the amount of the fund. That argument has been constantly used against State funds. While it is true that no State is held responsible if the fund goes bankrupt, the probable attitude of the State in coming to the rescue of the State fund, if the State fund goes insolvent, is shown by California. The failure of an insurance company there resulted in thousands of dollars of unpaid claims. The legislature of the State, however, appropriated between \$60,000 and \$70,000 of public money to pay these claims, showing what the attitude of the State would be if—

Mr. FRENCH. May I interrupt you to tell you a little private inside history on that matter? That failure took place exactly as you stated, and three members of the commission, Mr. Pillsbury, Mr. Lissner, and myself, were very much concerned, and I advocated introducing bills in the legislature. Mr. Pillsbury and Mr. Lissner were very sympathetic and thought it would be an excellent thing to do, but it would be impossible. We asked the attorney general

and he supported the view of Mr. Pillsbury and Mr. Lissner. I was in the minority. I was not satisfied, and I went to the governor and I told him the situation, and he said, "Go ahead and introduce your bill and we will see what we will"; and much to my surprise, and also the surprise of my colleagues, it passed both the senate and assembly with few adverse votes. It reached the governor who followed Gov. Johnson, Gov. Stephens, and the matter was placed before him in the same way, and the bill was signed, and the State treasurer approved, and the money was paid out.

Mr. HOOKSTADT. In conclusion, I wish to say this: I have been hitting the compensation commissions pretty hard, but what I have said does not apply to all commissions. I want to give credit for the work that has been done. Some of the commissions have done good work; they have done original work. They have investigated to some extent the operation of their laws. I thoroughly appreciate the good work they have done, and we at Washington are only too glad to publish anything that the States have done which will help other States in solving their problems.

Dr. MEEKER. Mr. Hookstadt, as he put it, has said some rather rough things about compensation, but it was not directed against compensation commissions. Mr. Hookstadt perhaps did not make that clear. It was rather directed against compensation legislation and the insufficient support the commissions are given in legislatures. I want to make that very clear and very emphatic. I think the commissions have done almost miraculous things under the handicaps under which they are obliged to labor. It is remarkable the things that have been done—some of them extralegal, if not absolutely illegal. They have not been given the proper legal authority, and as for appropriations I have no words in which to characterize the niggardliness of legislatures in that regard.

Just one other thing. Mr. Hookstadt is excessively modest, as you all observe. In regard to the waiting time between the occurrence of the accident and the payment of claims he said that he did not know whether 53 days was excessive or not. Did you say 53 days or 53 weeks? Well, it does not make very much difference whether the delay is 53 days or 53 weeks so far as the workingman's family is concerned. A family can starve in less than 53 days. I was and am still a laboring man, and I know what a laboring man is up against, and so do most of you, even if you have not done manual labor. You have come in contact with workers and you know that the laboring man who is deprived of his wage for as much as three days is on the verge of penury, as Mr. Duffy has pointed out. To me a waiting period for compensation claims of 53 days or even 2 weeks is much too long. We have got to speed up the process, and as for the claims of promptness as against so-called justice, give me

promptness every time. I think if the claims are not just—if they are either unjust to the employer or unjust to the employee—those things can be corrected, but we must get the compensation into the hands of the worker or his family and get it there quick.

Mr. ANDRUS. As Illinois seems to be hit hard in Mr. Hookstadt's discussion, I want to say that no apology is necessary so far as we are concerned. We are very glad to have it, provided that it is intelligent and for justifiable motives—both of which exist in the present case.

In regard to the insurance companies sending in reports, I remember talking to Mr. Hoage last summer at Madison. He said they had that system in New York, and he said that he could not see any objection to it. Insurance companies do not make out reports; the employer makes out reports. The only evil I could see in it is that they might withhold reports, which I do not think they do. The employer must report to the insurance company, and he makes the same report for us. If that is a wrong system we want to change it. He has very much to say in regard to the fact that we have 3,000 lump-sum settlements in Illinois. That is not exactly true, although the figures are correct.

Dr. MEEKER. Do you mean to insinuate that figures lie?

Mr. ANDRUS. No. Words lie. That is a subject I wanted to hear more discussion on than any other subject except rehabilitation at this time. I knew Mr. Smith, of Michigan, had very positive ideas on this.

I wrote Mr. Meeker—that is, whether settlements should be allowed or not? I do not know. I am not quite sure—that is, whether compromise settlements should be allowed. For example, a man is injured on a railroad; it is a 50-50 proposition whether he was engaged in interstate or intrastate commerce. His recovery would be \$600 if he was under our law. They offer to pay \$300. As a result it looks to be the proper thing to take that money. Now, I know that some commissions do not do that. I believe the majority of them do not do that. They do not allow any compromise.

It is a subject I am intensely interested in. They are that kind of cases—the 3,000 cases—most of them. They are not all paid in a lump sum. Some of them are and some are not. Not only where liability is doubtful, but where there is a question of the future extent of the disability, we have allowed it. I do not know whether we are right or not. I would like to have it discussed.

Mr. KENNARD. As to the statement which was made by Mr. Hookstadt in reference to the administration cost in Massachusetts, I was very keenly aware of the fact that the comparison between Massachusetts and Ohio was not a tenable one; but I thought the idea might occur to some of you, as it did to me as he mentioned the

figures, that it costs us \$125,000 in Massachusetts to carry \$5,000,000 to the workingmen. They are carrying \$10,000,000 to the Ohio workingmen, and he says their cost of administration is \$300,000. I appreciate that you can not double the amount. In Massachusetts the insurance companies do a great deal of accident-prevention work. They inspect all their risks, and they are a great agency in our Commonwealth for the prevention of accidents. They make full investigation of their claims, so that no just claims will be disallowed. I submit that justice in the administration of this act is the best way to administer it without any question. They also carry all administration expense that is necessary and then get the employee his money on the day that the statute says he shall get it. And the thought ran through my mind, How can the State of Ohio do that on an expenditure of \$300,000, when it costs us \$100,000 to keep the wheels going without doing any of this work which is done and which I presume must be done in Ohio?

The CHAIRMAN. Under the heading of discussion we have Mr. E. H. Downey. Is Mr. Downey here? Is there a representative of his here? If not, the meeting is open for general discussion.

Mr. BUTTLES. I just want to ask Mr. Hookstadt one question, and that is whether he has in mind any means by which this idea of levying an assessment, in case of the death of an unattached man, for the benefit of second injury cases, may be carried out in States where they have no State fund machinery by which to do it?

Mr. HOOKSTADT. I see no reason why not. They have just adopted the special fund plan for compensating second injuries in Wisconsin, which has no State fund.

Mr. WILCOX. New York has a contract.

Mr. HOOKSTADT. They have a State fund.

Mr. WILCOX. Their law provides a certain amount in all death cases; that all employees in the State of New York pay money into the State treasury, into this State fund. I don't know where it goes, but it goes into some particular fund. Every time a death occurs in New York and the deceased leaves no dependents a certain amount is paid into this fund. I framed the Wisconsin act and I met opposition in the legislature, and I changed it then so as to put the loading onto the industry where the man lost his first eye, his first arm, his first leg, on the theory—and I was able to convince employers at that time that that was a more equitable basis because it made the industry that caused this man the first injury and put him into the position where he would be discriminated against thereafter—it made them responsible in the case of a second injury to the same arm or leg, or to another arm or leg or foot, and that goes into the State treasury. I figured out the number of cases we had. We had 101 cases of men in Wisconsin who had lost an arm or leg or eye dur-

ing the year previous, and we figured that \$15,000 would be sufficient to take care of those second injuries; we figured that out of our experience that Mr. Hookstadt has referred to, and so we required these companies to pay \$150 in each case, which would create a fund

Mr. BUTTLES. And that money is withdrawn?

Mr. WILCOX. By order of the board.

Dr. MEEKER. I would like to ask Mr. Price two questions. I would like to ask how second injuries are dealt with in the Ontario jurisdiction, and also about your insurance fund. Is there any possibility of the insurance fund becoming bankrupt, so that either the employee or the employer might suffer hardships? Will you elucidate that point. Mr. PRICE. I do not know I am sure as to the question of our fund becoming insolvent. That to me seems an impossibility. We have an assessing power. I can not conceive of circumstances existing under which we will not be able to pay our liabilities, with the power of the State behind us to assess as we have.

As to cases of second injury we have no option under our act but to do one thing—to compensate the workman for the injury, the loss of earning power, that he has suffered. That is a simple proposition. We have got to work that out; the workmen must be compensated. The class, of course, bears the expense; and while we have no definite data, as has been remarked, I am thoroughly satisfied that the additional cost is exceedingly slight and always will be exceedingly slight. I am satisfied that in this Province the workman who is suffering from disability is not handicapped to any very serious extent in getting employment. From all the information I have I think that cases are exceedingly rare where the workman is refused employment by reason of any disability he may have.

Mr. FRENCH. I should like Mr. Andrus to state just exactly what he means by a compromise payment. Does he mean a payment for less than the amount specified in the act?

Mr. ANDRUS. That is one feature of it, yes; in cases of doubtful liability.

Mr. FRENCH. In California our policy is to decline to approve any such compromise if the case is clear and there is no good reason apparent, and we very rarely agree to a compromise unless in a case that I might describe as follows, because it is an actual case: A man was kicked on the shin bone by a horse and died shortly afterwards from pneumonia, and the insurance companies, for some reason, wanted to settle with the widow for \$1,000. We had our medical department look into the case, and we were informed that there was no connection between the injury and the death. We informed—we are always very frank about those things to the other side—we informed the insurance company of the situation. The insurance company said, "We want to make a settlement if you approve."

We approved that settlement because we felt that an insurance company with a well-regulated heart that wanted to give a thousand dollars to a widow was quite an exceptional condition of affairs, and so we approved that settlement.

Mr. ANDRUS. Let me ask—another case of a small employer, insolvent, and offering to make a payment over a long period of years of about half of what the law would give them—would you approve of that?

Mr. FRENCH. We have approved very few such cases, on the theory that if we did not do that there would be small likelihood of the injured man or widow getting anything. But under our law the employer must either take out insurance or secure a certificate of consent to self-insurance.

There is just one other matter I would like to touch upon. We listened to a very able discussion by Mr. Beers the other day on the way of checking up injuries. A year ago, in California, realizing what they had started in New York and some other States, we thought we would find out just what happened. We have roughly 100,000 accidents, and we decided to discard the temporary injuries because we get reports from employers and from insurance carriers and from the doctors. We get usually two reports from each. In addition to that, we always send the injured man a small pamphlet—I would like to draw your attention to that—as soon as he is injured, headed “Information for employees,” and it very tersely gives the benefits provided by the act. In addition to that, we have other means of finding out just what happens in those temporary cases. So we decided to put aside ninety thousand odd of temporary cases; and death cases are, of course, comparatively easily checked up. That left approximately 2,000 permanently injured cases. Those are the cases, gentlemen, that you want to look into. In my opinion Mr. Beers’s argument, while excellent, was not the best of those presented, because, you know, it has been found in New York—and I will tell you what we have found in California.

We have found in many cases, I am sorry to say, that permanent disabilities have not been correctly rated because the proper information has not been supplied the industrial accident commission—sometimes because of subsequent developments to the injured man that were probably unknown at the time of the injury. In a few cases—I do not believe there have been many—but in a few cases wrong information was turned into the industrial accident commission. We have found men who have been allowed awards in some instances many hundreds of dollars less than they should have been awarded; and we are asking all these permanently hurt men in California to come into the office of the commission in San Francisco if in the north, or in Los Angeles in the south; and if they

can not come into either office we are making other arrangements, so that they may be reexamined, and now, before any permanent injury award is allowed, the industrial accident commission through its own force checks it. Now, we found, for instance, a man would be allowed for injury to two fingers, according to all reports, and everything was beautifully clear, and our medical man would find out in addition to that—the report was perfectly true—but there was forgetfulness in alluding to an injury also done to the palm of the hand, with very vital effect on the remaining fingers and thumb, and consequently larger amounts have been awarded.

If there is any commission that is not looking into that situation, let me tell you as earnestly as I can it is a situation that ought to be looked into—the permanent disabilities. There are not very many of them. You probably will not get more than two or three thousand out of 100,000 cases, and they are the cases that you ought to follow up.

Mr. HENDERSON. I want to say by way of information that Indiana had an elective act, enacted in 1915. This year the legislature singled out the coal industry and passed a compulsory compensation act applying to the coal industry only. That was attacked upon constitutional grounds in the United States district court and Judge Anderson, who is judge of the Indiana district, held it was within the power of the Indiana Legislature to single out one industry and that it was not in contravention of the equal protection clause of the fourteenth amendment of the United States Constitution. All the personal injury cases that occur in coal mines are handled through the miners' legal department.

I have heard a great deal about direct settlement. The Indiana law provides (form 12) that you can sign a contract to pay compensation at an agreed average weekly wage, and I will say, gentlemen, when there is no dispute as to what the average weekly wage is, it strikes me there ought not to be any impediment thrown between employee and employer which would preclude his right to enter into a settlement to pay compensation during disability. In the cases of partial permanent impairment, permanent partial disability, and disfigurement, which are very frequent in coal-mine accidents, we have an idea of the rate and allowance that the board makes for scars and disfigurements of certain peculiar character, and it has been the practice in Indiana to follow the board and we usually know about what the award would be, and we have always gone ahead and made the settlements, of course, subject to the approval of the board. I can not see any serious objection to that.

The commissioner from Illinois has called your attention to cases of doubtful liability. I want to say from the standpoint of an attorney who represents the workmen, that there are very many close

questions coming up, and questions of whether or not the accident arose out of and in the course of the employment. For instance, I know we have shot firers in Indiana coal mines. They are employed by the men or have been under the old law, and there have been some serious questions whether or not they were employees of the coal company or of the men. May be the coal company paid part—there are decisions along that line. And other cases where questions have been close we have made settlement, and they have been with the approval of the board; and I think in nearly every case the settlements have inured to the benefit of the workmen.

There is another thing which I have not heard discussed, in which I am very open minded, and that is the question of State insurance. I have not heard any speaker discuss the question of reciprocal associations. The Indiana law favors this form of insurance—reciprocal insurance—and I will say practically all the coal mines of Indiana are insured by reciprocal associations.

Under this system I will say that we have been able to get quick settlement. Under the system in Indiana these reports come in to me on an average within three days after the accident, and through a system of mailing (Form 12), which is a contract to pay compensation not exceeding 500 weeks, which is the maximum limit in Indiana, within a very few days we have that contract signed, the board has approved of it, and the man gets his compensation usually on the fifteenth day—that is when he is entitled to it under the Indiana law. That has been conducted through the legal department. Under the system of reciprocal insurance, where they are required to put up certain reserves to guarantee the payment to the workmen, I think that insurance has been reduced down to a low premium so far as the employer is concerned, and I will say that in Indiana the premiums have been reasonable and payments have been made promptly.

Our industrial board has large jurisdiction over these associations. No policy can be issued unless it has the approval of the industrial board. The new amendment of 1919 prescribes the policy form of reciprocal associations; and, for instance, when we settle a death case in coal mines that runs \$13.20 per week maximum—and nearly all cases are maximum for 300 weeks—they are required to make a special deposit of a fund to guarantee the payment to the dependents. I am somewhat partial to this particular form of insurance. It has proved successful in Indiana and there have not been any cases of insolvency. I have not heard the subject mentioned, and if there is any grievance against it, why, I am open minded; I would like to hear it. I have not heard any discussion about reciprocal associations. I have heard a great deal about mutual companies.

The CHAIRMAN. We will have to close this discussion for this occasion.

**THURSDAY, SEPTEMBER 25—EVENING SESSION.**

MR. KINGSTON. One of the pleasant duties, or one of the pleasant circumstances, connected with the occupation of the office of president of an association of this sort is that of getting some one else to do his work for him. So I felt, in preparing this little dinner to-night that I must look around for some one who would give a chairman's address. I had at once in mind my good friend, Sir John Willison.

I would like to tell you a word so that you will understand the setting in which Sir John exists at the present time. I was talking with a gentleman three or four nights ago—a returned officer from the Canadian corps. He was on the Canadian Corps Headquarters Staff during its three months' occupancy of Germany this last winter, and he had during that three months an opportunity of coming fairly intimately into touch with some of the German people along the Rhine. Naturally, of course, they had a great many excuses to offer for losing the war, but, amongst others, they gave this, which is certainly rather novel—one which I had not heard before: "We will tell you the man who won the war. It was Lord Northcliffe." That will come as a surprise to probably a good many Canadians as well as Americans. You may wonder why I mention that. Lord Northcliffe, as you know, is the owner of the London Times and the Daily Mail, and I do not know how many other papers in the old land, and there is a most distinguished journalist in Canada who is the representative here of the London Times; and if Lord Northcliffe and the Times had anything to do with the winning of the war, possibly it is not out of place to suggest that his representative in Canada had something to do with making the journalistic balls that were shot overseas.

I have much pleasure, indeed, in asking Sir John Willison to preside at this meeting and incidentally to give the chairman's address.

MR. WILLISON. I am glad to learn from the chairman how I exist, because it is a problem that occasionally gives me a great deal of trouble. All my life I have been a journalist, and I have often said that journalism is not exactly a trade, nor quite a profession, nor always a means of livelihood.

I am not at all certain that the president in evading the duties of chairman has provided for a chairman's address. My voice, as you will notice, is not in very good shape to-night. I could give you a

reason, but I shall not; and I think of a gentleman I heard speak in Boston, and he said that he had been speaking a few nights before at a Liberty loan meeting, and some one at the back of the hall kept shouting, "Louder, louder, louder." Finally a man stood up at the front and said: "Sit down, you fool; if you were up here where I am you would thank God you can not hear this man."

However, it is a pleasure to preside over this meeting, and I understand that the first and last lesson in the education of a chairman is that he shall learn to keep silence, and I will lapse into silence in a very few moments.

Perhaps at the outset I should welcome to Toronto and to Ontario our friends from across the line. There is a bond of race, there is a bond of national sentiment, and there is a bond of language. It is said that Bismarck once declared that the most significant thing of his time was that the United States spoke the English language. I believe an American has said that we English people now speak only a dialect of the English language. But I think that during the last two or three years we have had a demonstration of the power of sentiment and of the effect of language in bringing people together for a great crisis in the world's history.

I shall not dwell upon the war except just to say that through the generations I believe Canadians and Americans will rejoice that they were comrades in arms in the great endeavor to establish democracy upon a foundation which shall never be removed. It has often been said—I think it was first said in the United States—that the chief end of the war was to make the world safe for democracy.

Following the war we have another great problem—in some of its phases as great a problem as the war itself—and that is to demonstrate that the world is safe under democracy. I believe that those of you who are here—mostly engaged, I believe, in connection with the work of compensation boards and accident boards, in that type of social service which has become so conspicuous in our time—are doing a great deal not only to make the world safe for democracy but to make the world safe under democracy.

Sometimes I am charged with being a Tory, and more often I am charged with being an extreme radical. I look back to the long agitation for workmen's compensation in this Province and in other communities. Whatever differences prevailed as to the wisdom of that legislation, whatever obstacles had to be overcome in achieving that legislation, I believe that in Ontario to-day in many of the other Provinces of this federation, and in most of the States of the Union there is absolute unanimity of sentiment behind that legislation. I undertake to say that—while I may perhaps be looking a little beyond my time—I undertake to say that the time will come when in support of health insurance and compensation for invalidity

and provision for old age there will be just as much unanimity of sentiment throughout the world, throughout this continent, as there is to-day in support of workmen's compensation.

It is said in Ecclesiastes: "Woe to him that is alone when he falleth, for he hath not another to help him up." And just following that phrase there is this: "The profit of the earth is for all; the king himself is served by the field." One of the results of this war is to demonstrate the dignity of human nature and to give a new meaning and a new significance to the old teaching that a man is his brother's keeper. And my experience of employers, with whom I have had a somewhat intimate relation during the last year and a half, is that the feeling toward these progressive measures about which the world is thinking in these days—while there may be differences of opinion—is almost as acute and universal as the feeling among leaders of labor and social reformers.

It was my privilege, with Col. Carnegie, who sits to the left, and with a gentleman or two in front of me, to attend the industrial conference at Ottawa last week. I notice that the newspapers are questioning whether or not great good was achieved, whether or not there was substantial agreement reached upon many vital problems. At least agreement was reached upon a number of problems of considerable importance and significance. But the vital thing was this: That employers and workers met together face to face; they discussed their problems in a common, fraternal, human spirit, and this result was achieved—that the feeling of comradeship was infinitely more acute when the conference ended than when the conference began. When you can get men together around a common table, as was done at Ottawa, as is being done in many of the industries of this country, in many of the industries of Great Britain, when we get employers and workers together in common council to consider their common problems, you have gone a long way toward the solution of the social and industrial troubles which have afflicted this world for so long, and are afflicting it to-day in grievous degree in many countries.

I said in the beginning that we would rejoice through the generations in the comradeship which was established between this country and the great Republic to the south during the war in Europe. I think we are recognizing as never before, whether we live in Great Britain, in the United States, or in Canada, that the peace of the world depends in an extraordinary degree upon the maintenance of good relations between the English-speaking nations; and I think of no higher task that could fall to Canada than so to interpret the British Empire to the United States that between the United States and Canada and the United States and Great Britain there will be peace while the world lasts.

It is now my privilege as chairman of this meeting to introduce Mr. A. H. Young, manager of the department of industrial relations of the International Harvester Co., of Chicago; and, if I am not mistaken, his subject will be an elaboration of one or two of the points upon which I have touched, for I believe in those great industries they have established industrial councils, and there the workmen in those great concerns are meeting face to face and are getting, as I understand, very satisfactory results.

## PRINCIPLE AND PRACTICE OF COOPERATION IN INDUSTRIAL RELATIONS, AS EMBODIED IN PLANS OF EMPLOYEE REPRESENTATION.

BY A. H. YOUNG, MANAGER INDUSTRIAL RELATIONS, INTERNATIONAL HARVESTER CO., ILLINOIS.

I shall purposely refrain from any reference to so-called "industrial democracy." It is an ambiguous term and is obviously misapplied in the many and various forms of government of industrial plants embracing acceptance of the principle of definite participation by employees in administrative councils.

In so far as the principles of employee representation in industrial-plant government is concerned, I can find no new and original thing involved; it is only in the manner of application of the principles, in the practice, that progress has been made. Nearly a century ago, in 1838, Daniel Webster spoke these words in the Senate of the United States:

There are persons who constantly clamor. They complain of oppression, speculation, and the pernicious influence of accumulated wealth. They cry out loudly against all banks and corporations, and all means by which small capitals become united in order to produce important and beneficial results. They carry out mad hostility against all established institutions. They would choke the fountain of industry and dry all streams. In a country of unbounded liberty they clamor against oppression. In a country of perfect equality they would move heaven and earth against privilege and monopoly. In a country where property is more evenly divided than anywhere else they rend the air shouting agrarian doctrines. In a country where the wages of labor are high beyond parallel they would teach the laborer that he is but an oppressed slave.

Cooperation, brotherhood, frankness, the right of self-determination—all these are expounded at length in the teachings of Confucius, Aristotle, the Disciples, the framers of Magna Charta, and of the Declaration of Independence. They are subscribed to by all men.

But the indorsement of principles does not always affect their operation. Wellington is quoted as saying, "I believe in democracy, except aboard a man-of-war"; and yet throughout a long life he definitely proved that he did not believe in any form of democracy anywhere. Until the Great War, a paraphrase of this saying, "I believe in the right of employees to participate in the determination of policy in all matters of mutual interest to men and management, except in my own shop," might very closely have portrayed the position of nearly all "captains of industry"; and yet the administration

of our modern business activities has until very recently been probably as autocratic as the despised Prussianism.

While it is true that Mr. John D. Rockefeller, jr., launched his Colorado fuel and iron experiment (with the very able assistance of your fellow provincial, Mr. W. L. MacKenzie King), and Mr. John Leitch had inaugurated some of his very successful adventures in profit sharing before the commencement of the great struggle for the defeat of absolutism had begun, it must be generally acknowledged that, directly and indirectly, it was the Great War that brought into being on a large scale the present general acceptance of the principle of cooperative representation in industry.

Directly, I say, because in the training camps here and in the trenches over there, millions upon millions of men, rich and poor, executive and laborer, high-brow and low-brow, worked, fought, suffered, and died together in a common cause. They learned in that fearful ordeal that each was of the same clay as the other; they learned the mutual interdependence of all members and elements of society, and they learned anew the native, inborn fairness of the Anglo-Saxon.

It was inevitable that these influences should be reaffirmed and expressed in a new order of things upon the return of these men to industrial pursuits. I would not consciously limit this chastening and enlightening of spirit to men alone, in disregard of the equal sacrifices and sorrows of the women of our countries. Their contribution to the well-being of civilization has been no less noble than that of the men, who were, as they have been taught to believe, cast for the more heroic rôles of life.

And it was inevitable that, with the thoughts of the whole civilized world directed for more than four years toward "making the world safe for democracy," the successful culmination of that effort should influence the recasting of the new order of things in the business world which was bound to follow the war.

Specific impetus and form were given this new adjustment of industrial affairs during the war by the awards of the national War Labor Board in the United States and the reports of the Whitley committee in England. The operations of the War Labor Board are of particular interest in this connection. Composed of an equal number of representatives of organized labor and of employers, and officered by joint chairmen representing both factions, it quickly adopted a platform affirming the right of workers to organize and bargain collectively, but likewise guaranteeing to the open-shop employer the preservation of that status.

The fundamental purpose of this board was to guarantee the non-interruption of war-time production through strikes, lockouts, or improper working conditions. Its awards were practically manda-

tory; they were over 500 in number, and affected many thousands of workmen engaged in the most important manufacturing and public-service corporations. In practically all cases where there did not exist a definite arrangement between employer and employees for the expression of collective bargaining (such as union labor agreements), the board set up a form of committee organization through which its principles were expected to be put in practice. The committee members were elected by nonsupervisory employees from among their own number and sought to voice the opinion of the whole group of employees and to counsel and bargain directly with the executive officers of the company in matters of wages, hours, and working conditions. Failure of agreement was adjusted by a special umpire of the War Labor Board or by the board itself.

The principle of arbitration involved is not new; indeed, it follows closely Mr. Rockefeller's original Colorado plan. Probably the most important criticism that can be made of it is the fact that the workmen's committee meet by themselves and formulate demands and recommendations instead of meeting jointly with representatives of the management for frank discussion and development of a mutually satisfactory program. Under this latter form better understandings are had, agreement is more rapidly reached, and recourse to arbitration is much less frequent.

In connection with arbitration it is interesting to note that a Y. M. C. A. worker assigned to teach the writing of their native language to illiterate Chinese coolies serving overseas reports finding among Confucian characters, more than 4,000 years old, very definite advice to resort to the practice of arbitration in all cases involving dispute.

Voluntary acceptance of the principle of collective bargaining by the firms and corporations on the American continent has been much more rapid and general than was secured by the enforced awards of the War Labor Board. To-day we find scarcely an issue of the daily press which does not contain some announcement of the inauguration of a plan of joint government in still another company or a record of surprising success under a plan already existing. And yet the whole movement is so new that those who speak from an experience of only a few months are regarded as pioneers.

In substance the various types of plan differ more in manner of expression and detail of operation than in essential statements or fundamental principles. The most recently developed plans, probably representing refinement of earlier ones through experience, embody—

1. An invitation to employees to elect special representatives to formulate the plan in conjunction with the executives.

2. Limitation of suffrage to employees of nonsupervisory grade, and secret balloting to assure free choice.

3. Provision for representation by department and shops, in line with the natural geographic division of the shop.

4. Appointment of management representatives to a number not greater than the total elected employee representation, the two groups constituting a joint council for the discussion and adjustment of all matters of mutual interest, including wages, hours, working conditions, housing, recreation, education, etc.

5. Assurance of freedom of action of employee representatives in their duties as such.

These things I regard as highly important for inclusion in the plan as a sort of "bill of rights."

The form of organization suggested in the reports of the so-called Whitley committee, and adopted with some degree of uniformity on the Continent, differs materially from that which is rapidly becoming general in Canada and the United States. Briefly, the full scheme provides in each industry a joint standing industrial council, to be set up by agreement between employers' associations and the trade-unions in that industry, and to contain equal numbers on each side; district councils, to be set up by the national council, of similar composition; and works committees in the individual plants. Seemingly such a plan can function efficiently only where there exist "responsible associations of employers and workpeople."

In a consideration of which of the two plans may best be applied to our Western Hemisphere I would respectfully call your attention to the following statement published by a conference group:

Reasons why the joint conference plan of industrial employees' representation is better adapted to American industrial conditions than the so-called Whitley or national industrial council plan of England:

1. The English plan is built upon the principles of two opposing interests, capital and labor, organized separately; but the joint conference plan assures unity of interest and cooperation on the part of all directly concerned.

2. The English plan presupposes unionized conditions which prevail in England, but which do not prevail in America, where only a minority of the workers are unionized. It would be distinctly un-American to force here such unionization as the English plan requires. The plan for America must suit American conditions.

3. In England, which is a compact country, with a homogeneous population and a similarity of industrial conditions, it may be possible to attempt standardization as proposed; but in America, a large country, with a diversified population and widely differing industrial conditions, the working conditions can far better be settled in a joint conference with reference to the situation in each locality and plant.

4. The English plan introduces into labor discussions representatives of outside organizations who can not have as their primary interest the good of the particular company concerned, since they are not associated with it, either as managers or employees; the joint conference plan brings into discussion with

the management representatives who are employees themselves; and hence are vitally interested in the company's success.

5. The English plan sets up an elaborate and expensive mechanism for the adjustment of industrial problems under Government supervision, while the joint conference plan affords a quick, satisfactory, and economical method of settling such problems by direct contact between employer and employee.

6. The English plan may be adapted to English conditions, where the status of the workingman is comparatively fixed; but the joint conference plan is far better adapted to America, where the status of the workingman is not fixed and where unlimited advancement is open to him in accordance with his ability.

7. The English plan would be a radical departure for American industry, while the joint conference plan has afforded a satisfactory basis for many recent settlements of industrial disputes in this country. It has also been adopted in a large number of American companies, and is proving satisfactory to both management and employees.

And yet, after all, it may be idle to dwell too heavily on structural details of the plans, in the light of the truth of the old adage, "The spirit quickeneth but the letter killeth"; for it is not so much the manner in which the plan is written that determines its success or failure as it is the way in which it is conducted. Once a group of fairly selected employee representatives is invited to sit with the management and join with it in determining the policies of the company in matters of mutual interest, the constructive activities of that council are limited only by the extent to which frankness and fairness are absent from the deliberations; and if all of the parties to the conference are right minded, a written covenant is scarcely necessary to circumscribe their action, although it may expedite their functions.

The main purpose is that a medium shall be furnished through which the ideas of the management may directly reach the employees, and vice versa, for thus are removed the barriers to understanding, and thus is laid the foundation of true cooperation and associated effort.

In conclusion, ladies and gentlemen, may I have your further indulgence for a few moments, to present a number of statements of our own experiences under the Harvester Industrial Council plan, and allow you to judge of its efficiency as a means of establishing our industrial relations "upon a definite and durable basis of mutual understanding and confidence."

The plan was proposed for adoption at the 20 plants of the company in the Dominion and States on March 12, and was subsequently adopted at 19 of them at secret ballot elections, participated in by 97 per cent of all the employees not having power of employment or discharge. One Chicago plant rejected it, and this plant furnished the only strike or breach of contract that has occurred between employees and management since the adoption of the plan. Ninety-nine per cent of all employees present and eligible

actually voted in the election of representatives, and the winning delegates received, on an average, 68 per cent of all the votes cast. One hundred and forty-eight employee representatives have been elected, of whom 127 are married men, and 102 are native-born citizens of Canada or the States. The average age of all is 39 years, their average length of service in the company is over  $7\frac{1}{2}$  years, and many of them are stockholders of the company and owners of their homes. It is significant to thus observe that, in an untrammelled selection by secret ballot, the employees elected as their representatives mature, conservative workers of long employment with the company. Four of the representatives are women.

The Harvester Co. has always operated under the open-shop principle, but a number of union men have been elected as employee representatives and are serving on works councils. Our experience shows that these men appreciate as readily as nonunion employees the constructive possibilities of the plan, and there is no indication that their participation in the cooperative activities of the council is not fully as satisfactory as that of the nonunion representatives.

One of the first results under the plan was, naturally enough, a demand at several of the plants for shorter hours and increased wages. As one old-timer said it looked very much as if the company was giving a sort of Christmas party when it passed around those booklets saying that the works council would determine wages and hours.

With a single exception these requests were withdrawn voluntarily by the employee representatives upon presentation of the management's side of the case, which was to the effect that this was not an opportune time for such action—that the agricultural implement business was a competitive industry. We were able to show that our wages and our rates were as high or higher than in similar industries in our vicinity, and that only through constructive work in this council, through a greater efficiency in the reduction of the costs, would we be able to pay higher wages and still remain in a competitive market; and if they were willing to do their part we would do our part, and exchange figures with them, and show exactly what conditions were at any time; and when they felt that the time had come when we had better consider it again, we would do so.

This occurred early last spring, and it is only fair to say that, with rising living costs and the steady improvement of the agricultural-implement business, general increases of wages have since been negotiated by all works councils, to the complete satisfaction of all parties.

In our experience thus far under the Harvester Industrial Council plan the works councils have been able to reach mutually satisfac-

tory conclusions on all matters proposed, with a single exception. That exception was in reference to a demand for a wages and hours revision, affecting about 25 per cent of the employees of one of the plants. The proposition as put up by the employee representatives did not meet the approval of the local management. After an extended discussion that was wholly friendly and frank the ballot of the works council resulted in a tie. This was probably due to "an agreement to disagree," because both sides felt that the matter was one which could well be referred to the president for settlement, and were entirely willing that this course should be followed.

Automatically the matter came before the president, who was able to make a compromise offer to the employee representatives which met with their entire approval, and at a special meeting held four days after the original action had been taken in the works council, the proposal of the president had received the unanimous approval of the employee representatives and the matter was settled to the satisfaction of all concerned. In fact, it has resulted in a marked advance in the morale of the plant, and the friendly attitude of the employees toward the council is doubtless more firmly established by the manner in which this matter was handled.

You are all doubtless more or less familiar with the recent labor disturbance in Chicago, and in which the Harvester Co. became involved. The trouble started with us entirely unexpectedly at McCormick works, the only plant which does not have a works council.

I quote partly from a current statement by President Harold F. McCormick:

It was neither preceded nor accompanied by demand or complaint of any kind. The movement was started by a few hundred employees agreeing to a plan prearranged by outside influences.

From the outset the situation at the other plants following the walkout at the McCormick works was handled by the respective works councils with the utmost prudence and signal ability. At the near-by Tractor works and at the Deering harvester works the respective works council met in special session. They heard reports of intimidation, actual and threatened, encountered by employees upon the streets and at their homes. They took cognizance of the race rioting then in progress in Chicago and of the impending street car strike. On account of these conditions, the two councils voted to recommend that the Tractor works and Deering works be temporarily shut down.

Accordingly this was done, the Tractor works closing on July 16 and the Deering works and twine mill on July 18—in the latter case, after several aggravated assaults, even on aged and crippled employees.

The management advised the works councils that they should be the sole judges as to when these plants should reopen.

Thus was presented a unique situation in the country's industrial history—the closing of factories in which there was no dispute of any sort, done upon the sober judgment and at the request of the employees themselves, voiced by their elected representatives.

While the works were closed the councils were in frequent session and kept in touch with the thousands of scattered employees, ascertaining their views and advising them of the conditions.

When the dates for reopening the plants were set by the works councils the details were entirely planned by them; and here occurred another unique situation in American industry—the requesting by the employees of police protection against outside violence.

At the Tractor works the council invited the police captain of the district to a conference. The employee representatives informed him that a large majority of the men wanted to return to work and would do so, and that the plant would be reopened if assured adequate police protection. At the Deering works the same result was reached through a petition addressed by the works council to the chief of police.

On August 4 the Tractor works reopened, and on August 11 the Deering works. It should be written down to the credit of Chicago and of the police department, and particularly the captains in charge, that the police protection was ample and competent. There was no violence and no intimidation.

The first day at the Tractor works two-thirds of the normal force reported and within a few days the plant was fully manned. At the Deering works the process of resumption was slower, but full operation was reached in a short time.

In reopening the McCormick works, where there was no council, the management faced a different problem. Two weeks after the walkout a delegation, professing to represent the so-called "Federal Union," presented certain demands, including the closed shop and no piecework. This delegation was handed a written statement, subsequently sent to all employees of the McCormick works, saying that the Harvester Co. had always run its factories on the open-shop principle and would continue to do so; that it would have nothing to do with those who had instigated or willingly participated in and still supported the inexcusable and un-American walkout before making any demands; but that when the works reopened the company would welcome back the many employees who had quit under intimidation, and would discuss with them individually or collectively any matters of mutual interest.

On August 18 the McCormick works and twine mills were reopened, and within a week 4,500 employees were at work.

In Akron, Ohio, we have a large plant producing automobile trucks, and labor matters there are adjusted through a most efficient works council. Recent press dispatches carried the story that a strike of all union machinists in Akron had been called, affecting about 5,000 skilled men, and resulting in the closing of all shops except that of the International Harvester Co., where the men were not called out because the company had already negotiated an agreement with its employees. The works council immediately issued a statement, explaining the structure and purpose of the council; and although the strike has been in existence for several weeks, no employees of the Harvester Co. have as yet been called out and no interruption of the long-standing pleasant relations between men and management at that plant is in evidence.

This experience makes out a strong case in support of the industrial council plan. It has proved the great value of a common forum where workers and management can freely meet, frankly discuss their problems, and act effectively for their mutual good. We now have substantial reason, afforded by this recent severe test for the belief and faith that the industrial council plan of employee representation will prove itself increasingly useful as a means

and guaranty of the mutual understanding and good will between the management and the employees which is essential to sustained and adequate protection and to successful cooperation.

When all is said and done, the main thing, the one big accomplishment of the Harvester industrial council plan, is the fact that it has been the vehicle for frank, friendly conferences, participated in on exact equality, between the management and the freely chosen representatives of the employees. In this manner each has been brought to realize the problems, the prejudices, the ambitions and hopes of the other. Happily, we have come to believe that they may all be encompassed in the same program when squared by the group judgment of the fair-minded, forward-looking, responsible men and women who constitute our councils.

The CHAIRMAN. Before calling the next speaker I want to read a telegram from Mr. Robertson, minister of labor, who expected to be here to-night but unfortunately could not come. He says: "Owing to parliament being in session and other urgent matters necessitating my presence here during the remainder of this week, I regret I am personally unable to accept your kind invitation."

The next speaker is Mr. W. E. Segsworth, mining engineer, who has been engaged for several years in the great work of retraining returned soldiers. I think Mr. Segsworth was also a delegate to the industrial conference at Ottawa, where he on one or two occasions said particularly useful things to the council.

[Mr. Segsworth's speech was not submitted for publication.]

The CHAIRMAN. I would suggest before we break up that we ask Col. Carnegie to speak to us for 8 or 10 or 12 minutes. He has had an intimate relationship with the organization of workmen's compensation in Great Britain, and was in Canada in connection with the Imperial Munitions Board.

Col. CARNEGIE. I am quite at a loss to know what to say at this late hour. I have been trying to absorb the splendid addresses given by Mr. Young and Mr. Segsworth. Mr. Young's presentation of the council question is one I very heartily indorse. I had the pleasure of being invited to attend one of their meetings at Hamilton, and I had there an insight into problems of the works with which I have been familiar in the old country, and I find, as I suppose we have all found, that human nature is the same all the world over when you touch the heart. When you get sympathies and interests aroused in the things that are common to the employer and employee you create at once sympathy and interest that mean the very best effort in production. The extension of the problems as laid out by Mr. Young and their value to the International Harvester Co. have been so

clearly set forth to-night that we are all, I am quite sure, satisfied in our minds that whether the plan be a Whitley plan or the Rockefeller plan or the International Harvester plan—anything that will bring a sense of responsibility to the worker, making him feel that the employer has an interest in him as well as in the profits of production, that plan, I am sure, will bring production and prosperity to the country.

With regard to the problems in England, which are very much more aggravated than they are here, we have had to set out on lines of recognizing organization as an absolute essential. Organizations of the employers and organizations of the employed meet in joint relationship to consider the problems in the works and in the industry—particularly in the industry.

You may have read Mr. Lloyd-George's speech in which he stated that while congratulating Mr. Whitley on the result of the Whitley councils—I suppose he was voicing the opinions of his advisers—that had those councils commenced their operations in the works, where the troubles generally arise, greater success might have followed. That was considered at the time Whitley and his committee made their plans. The difficulties are many, very many indeed, having sometimes 15 or 16 different unions represented in one workshop. To find representation that will satisfy each union with that share of responsibility that the union considers it should have on any council in a workshop made the plan almost impossible of success with the state of mind amongst the employers and employed at the time that the Whitley council was started. It was therefore decided that the plan should be first of all launched in industry as a whole, recognizing that the employer with his difficulties could have representation upon the national council if he as employer belonged to the organization of the industry of the employers and the employees belonged to the organization and their unions, and that has been the basis of organization for the national councils. But the progress, even on that basis, has been marvelous. Forty-two or 43 councils in different industries have already been established, having representation from organizations or organized labor unions amounting to over two and a half million, or about half the total organized labor of the country.

To deal with their operations one must sit in and hear and see. Think of the present situation in England, if I may digress just on this point. I do believe those councils must be established to produce harmony and, as a result, production. In 1913 the coal produced in England amounted to something like 280,000,000 tons, with something under 1,000,000 employees in the mines. The rate of production with over 1,000,000 employees runs to something like 227,000,000 tons.

A deliberate, shall we say—but whatever is the cause, here is a reduction, reduction of output per man in the mines—suspicion, distrust, that want of the confidence that inspires production, have been there. How can we reestablish that confidence? You see the groups, various groups in organized camps, you see the same kind of groups in the employers' camps—one doubting the other. Where councils have been established there has been increased production. I know of no strike that has actually taken place in any of the industries where Whitley councils have been established.

Mr. KINGSTON. Gentlemen, you of the conference will please remember that we meet to-morrow morning at the normal-school building instead of in the convention room here at the hotel.

**FRIDAY, SEPTEMBER 26—MORNING SESSION.**

**CHAIRMAN, CHARLES S. ANDRUS, INDUSTRIAL ACCIDENT COMMISSION,  
CHICAGO, ILL.**

**ACCIDENTS AND THEIR COMPENSATION.**

**STUDY OF ACCIDENT EXPERIENCE.**

BY L. W. HATCH, PH. D., CHIEF STATISTICIAN NEW YORK STATE INDUSTRIAL  
COMMISSION.

[Read by Royal Meeker, United States Commissioner of Labor Statistics.]

When the program committee assigned to me a place in to-day's session it is my understanding that what I was to do, if possible, was to say something that would stimulate more active interest and support by industrial accident boards and commissions of statistical work along the lines recommended by your committee on statistics. I happened to be present at the meeting of the program committee when it was making up this part of the program, and it was there intimated that my job would be to dispel the notion, said to be more or less prevalent, that statistics of accidents are not worth what they are claimed to be.

Now, your statistical committee has toiled much and arduously, and, if a member of the committee may be permitted to say it, not without success, to provide standard definitions, classifications, and table forms for the compilation of accident statistics which should serve as an aid and guide to the members of this association to make their accident statistics as valuable as possible. The committee has always assumed that it could be taken for granted that the value and importance of adequate statistical information concerning experience under a compensation law was everywhere understood, and so its problem was only that of standardizing method and procedure. It now appears that this was too general an assumption and that to a considerable extent it is now necessary to back up, so to speak, and show that the initial assumption of the necessity of accident statistics really has a solid foundation after all. In other words, it now seems necessary to prove that accident statistics, compiled in accordance with your committee's plan, will be when produced genuinely and importantly useful. So we will proceed to devote a few minutes to considering whether that statistical work which your statistical com-

mittee urges will produce only a lot of academic, high-brow stuff, or something really and importantly worth while.

Parenthetically, let us note at the start that for much of the so-called accident statistics which have been put forth little practical usefulness can be claimed. But that is because of the loose, unintelligent way in which they have been compiled. About the only practical use of some such statistics seems to be to keep some one in a job while compiling them, and nobody, except the compilers thereof, is much interested in such statistics.

Another feature of the matter should also be noted in a preliminary way. In many cases limitation of resources has compelled statistical bureaus of commissions to such restriction of work that even with proper planning and correct methods the results they can achieve are so limited in scope and significance as to give to those judging superficially a very false impression of the possibilities of such work. In other words the case must be judged, in part at least, according to possibilities as well as results thus far actually demonstrated.

Coming now to the gist of the matter, I wish to present four considerations (not all there are, but the principal ones, perhaps), in the light of which I hope it will appear that any commission which does not provide for adequate statistical information concerning industrial accidents under its jurisdiction is falling short of the best service which it can and should render. These are:

1. There is a wide demand for such information.
2. The information so demanded is indispensable for the solution of the two most fundamental and most practical of the problems connected with industrial accidents and compensation laws.
3. Accident boards and commissions are in a position to furnish such information better than any other agency.
4. Such information is needed by commissions themselves for intelligent handling of their own administrative problems.

Taking up the first of these, that there is a demand for industrial accident statistics, it is hardly necessary to point out. Doubtless your experience parallels that of ours in New York, and if so your daily correspondence bears evidence enough to the fact. No doubt also you have observed that this demand comes from those who are evidently not theorists, but are looking for something for practical purposes. Most numerous are requests from employers, safety engineers, compensation insurance carriers, and wage earners, whose requests, though for more immediately practical purposes, are not as a matter of fact any more legitimate than those of the social investigator and economic student. Let me call attention to the most convincing evidence of all that this demand for accident statistics is altogether hard-headed and important from the most practical point of view—namely, that employers, safety men, and insurance carriers are them-

selves spending a great deal of money to compile just such information so far as the material for it is within their reach.

The second general consideration here noted is the importance of accident statistics for the most fundamental problems connected with accidents. For what purpose is such information wanted? It is wanted in order to do intelligently one or the other of the two chief things which we have to do about accidents—that is, to prevent them or pay compensation for them. The whole business of accident prevention and of insuring the actual payment of whatever compensation an injured workman is entitled to is, and in the nature of the case must be, conducted by the process of anticipating ahead what experience is going to be, and the only possible means to such anticipation is knowledge of past experience. Machine guards or safety rules in an industrial plant are installed, if intelligently and effectively, not on the basis of somebody's guess that the machine or practice in question may cause an injury, but because experience has revealed that accidents do happen on such machines or from such practices. Compensation insurance premiums can not be calculated at all except upon the basis of knowledge of past experience. At the risk possibly of seeming to labor the point, let us push the analysis of the matter a step farther back, in order to demonstrate the necessity of accident statistics as a basis for anticipating experience. I venture to repeat here a statement of this point which I have used elsewhere.

The fundamental characteristic of an individual accident is that it is unforeseen or that it happens unexpectedly. This, however, is not because an accident, any more than any other occurrence in this world, happens without a cause, but because there is so great a variation from place to place and from moment to moment in any one place, in the circumstances which give rise to accidents, that, where individual cases only are considered, we seem to be dealing with nothing but blind chance as to their incidence, causes, and results. But the unforeseen or the unexpected in life is so simply because it is what has not been experienced before by the particular person who is the observer. As soon as the unforeseen is repeated in his own experience, or in the experience of others under his observation, the element of unexpectedness gives way before knowledge born of experience that such things do happen; and when the experience is long enough or broad enough this knowledge extends not only to the fact of recurrence, but also to more and more of detail as to frequency, causes, and results of such happenings. Note now that this experience, which will eliminate or reduce the element of the unforeseen in accidents and enable us to anticipate as to the future, means simply numbers of accidents brought together, instead of individual isolated cases considered separately; and that the larger the experience—that is, the larger the number of accidents observed—the

greater the light that is afforded for future guidance. Here, then, we are brought face to face with the necessity of bringing together large numbers of individual cases if we are to discover the lessons of experience. That is precisely the function of statistics, so that only by statistical studies may we learn from the past that which we must have for future guidance in this matter.

In the third place, observe that accident boards and commissions are in a position to secure the best statistics. It has just been indicated that the dependability of accident statistics as a guide for practical purposes increases with the amount of experience which they cover. A moment's thought will remind you that there are three possible agencies in any State which are in a position to compile accident statistics: These are the individual employer, private insurance carriers, and the State board or commission which administers the compensation law. Within reach of the individual employer there are only data for his own plant. Within the reach of any one insurance carrier are only the records of its clients, embracing (except in the case of a monopolistic State fund) only a limited portion of the industries, or of the plants in any one industry, of any State; and the same limitation, even though in lesser degree, applies also to associated carriers of a particular class. Only to the State board or commission administering a compensation act are all the data for all industries and all plants in each available. There is another important consideration here in that the State board or commission alone has an interest and point of view compatible with fullest publicity for all information available. With the individual employer, and still more with insurance carriers, there are business considerations opposed to full publicity, whereas the State's prime interest is in full publicity for all useful information.

Finally, to picture in full the unique opportunity open to the State boards and commissions of this association, it remains to note that there is possible through development in each State of accident statistics along the lines recommended by your committee, achievement of statistics of accidents national in scope. In endeavoring to establish standard classifications and tables your committee had in mind, in addition to providing each State with a guide for the compilation of its own experience, to make possible the combination of the experience of different States, presumably through the agency of the Federal Bureau of Labor Statistics, thereby attaining the maximum of what is desirable in such statistics for the use of each State, because for many purposes the most significant figures which a State can have concerning any industry within its borders are not those for only that part of the industry within the State, but those for the entire industry in the country. By the development of standard statistics in each State, each may gain for

itself and assist in contributing to others the best possible aid which statistics can afford, and, to a large extent, alone can afford, for the solution of the two great problems of prevention or compensation for accidents.

The fourth general consideration here noted is the value of accident statistics from the point of view of a board or commission as administrator of a compensation law. The unit of business to be handled by an accident board or commission is an individual claim for compensation, and its primary business is to determine for each unit as it comes along what the law requires in that case. It is conceivable, perhaps, that a board or commission might carry on its work by treating each case as an isolated unit. But just as in any other business handling a large number of units, if it is to know what is happening in its business as a whole, such a course is impossible. There must be an accounting of units in the aggregate, and this is a matter of statistics.

The particular point I have in mind here is not so much the mere mechanical handling of the business, as that of developing sound policies and correct standards upon questions either left to the discretion of the board or commission or raised by proposed amendments of the law. That this is a necessary part of the work of every board or commission administering a compensation law would seem to be obvious, and I have no doubt that you have all realized this from the requests for information coming from the public and from legislators, as well as from your own conception of your public duty, as including not only just administering of the law in each individual case, but informing the State of how the different features of the law actually operate, and guiding amendments in the direction of justice and sound policy. Dependable information adequate to this purpose is to a large extent purely a matter of statistics and can not be acquired by any other means.

It is proposed now to supplement the foregoing general argument, which may perhaps appear rather abstract than concrete, by some illustrations of practical questions of fundamental importance which the accident statistics which are within the reach of accident boards and commissions alone can answer. Four such will be noted—two concerning the general problem of accident prevention, one relating to that of compensation, and one to compensation insurance.

My first illustration will relate a bit of history in New York State. For many years accidents in factories in New York State have had to be reported to the department of labor (now administered by the industrial commission), but not until comparatively recent years were accidents in the building industry so reportable. A short time ago a study of the accident statistics for those two fields of industry brought forcibly to light the fact that the fatal accident

rate in building work was far higher than in manufacturing. This was in marked contrast to the fact that while State safety regulations for factories had been a matter of study and development for many years, but little regulation of that kind for building work had been undertaken. As a direct result of the facts so brought out the formulation of a code of safety rules for building work was inspired, and such a code is now about to be established and put in force by the industrial commission.

Here is another example from New York's experience illustrating how accident-prevention work must depend upon accident statistics for the solution of many of its problems. A revision of the safety rules for prevention of elevator accidents has been in preparation for some time. In the course of this a sharp difference of opinion and a rather stubborn controversy have arisen over one of the most important rules which relates to accidents at elevator entrances. The points at issue in this controversy are chiefly three: (1) As to how serious the hazard at elevator entrances is; (2) as to whether previous regulations have reduced that hazard or not; and (3) as to whether proposed new rules where they have been voluntarily applied have proven effective or not. Every one of these, as you will see, is a question which can be answered with certainty only by statistics of elevator accidents; and the writer has been called upon repeatedly to produce the necessary evidence of that kind. That the point involved is one of very great practical importance is evidenced by the fact that it concerns a hazard responsible for one-half of the compensated elevator accidents, including over a score of deaths annually.

Possibly it may seem to members of a board or commission whose sole function is administration of a compensation law that such cases as the foregoing, which relate only to accident prevention, are not a proper concern of theirs. But anyone inclined to that view should bear in mind that prevention of accidents is, after all, of greater profit to all concerned than paying compensation for injuries, and that, being in a position to produce statistical information necessary for prevention work, either solely or better than any other agency, it will be a very narrow view of their obligation toward the public which will permit them to refuse to render such aid to either State or private agencies concerned with the problem of accident prevention. Of course, to a commission whose functions embrace the work of accident prevention it is not necessary to emphasize this point.

Consider now a third illustration of practical things which can be done, and done only by means of accident statistics. This is one of most direct concern for any accident board or commission because it has to do with what they are most concerned with—namely, the de-

termination of just compensation for injuries. It has been said that in any compensation law the part of most vital significance to all concerned is that which specifies the amount of compensation to which an injured employee shall be entitled—that is, which defines waiting period, proportion of wages to be paid, and fixed schedules for permanent disabilities. As every one acquainted with the matter knows, the present provisions of law of this kind are to a large extent purely arbitrary, their adoption having been dictated by the necessity of getting some immediately available practical working basis rather than by study of their fundamental justice or social expediency. Demands for amendment of such provisions naturally arose early; therefore, have multiplied, and are bound to continue, as, I dare say, the accident boards and commissions generally have to do by experience. Such demands immediately raise practical questions of fact as to what results under existing provisions are, what effect proposed changes would have, together with most important questions of judgment as to what changes ought to be made, which accident boards or commissions alone can answer, or best answer. But how are they going to answer them with any confidence without adequate statistics of actual extent of disability suffered by injured workmen in their jurisdiction, and of amounts of compensation paid under their laws?

Consider a single phase of this general question which is very concrete and practical just now. Compensation laws generally set a maximum limit of weekly compensation which may be paid. With the recent rise of wages, coupled with the advance in cost of living, such limits must be operating very extensively to give to injured workmen far below that proportion of the economic loss resulting from their injuries which the laws formerly insured to them. In other words, the scale of compensation specified by such a law three or more years old has been very materially altered from what was originally intended as to the proportion of wage loss against which wage earners were to be protected. This is a matter of vital enough importance to wage earners and to society at large, so that there ought to be full information as to the nature and extent of the change which has occurred, so that amendments of law inspired by it may be wise and just. Only from statistics of wages and compensation of injured employees from year to year can adequate information of that kind be gained.

I shall cite here only one more illustration of the practical importance of accident statistics. The subject in this instance relates to compensation insurance, and is one of special significance from the employers' point of view. I refer to the whole question of compensation insurance rates, not with reference to their adequacy to insure payment of compensation to injured workmen, but as to whether they

are excessive—that is, whether employers, and through them the general public as consumer, are not being required to pay more than is necessary or proper to secure the workman in his right to compensation. In other words, it is the question of whether compensation insurance is as cheap as it can be or ought to be. It is hardly necessary to point out that when it comes to a question of insurance rates one is dealing with a matter concerning which statistics alone can afford the necessary basis for intelligent judgment or action. That being so, the opportunity and obligation of industrial accident boards and commissions in the matter seem clear; for, as already intimated above, such boards and commissions are not only in a position to secure the most adequate statistics of accidents and compensation which are of fundamental significance in the matter, but, as I wish particularly to emphasize, have a point of view which makes them the most fitting agency to consider the subject.

Insurance carriers, who are constantly accumulating statistical information relating to rates, approach the matter of course from the point of view of having rates high enough. State insurance departments by the nature of their duties, and by long established practice, are chiefly concerned with the question of adequacy of rates. It is, therefore, to the industrial accident boards and commissions that the public must look for information and study of accident and compensation experience, by means of which to answer the question of whether the obligation to pay compensation created by statute in the interests of society as a whole, is or is not being exploited for the purpose of private profit in an unjustifiable or undesirable way; for that is essentially what the question amounts to, because such boards and commissions by the nature of their organization and functions are concerned with the matter from an impartial and broad point of view. The fact that the question here referred to has thus far remained so generally untouched under our compensation laws in no wise lessens its importance. It is one of livelier interest to-day than ever before, and is bound to call for attention more and more insistently as time goes on.

Not to prolong the argument or add to the foregoing presentation of only a few general considerations or concrete examples for which alone, out of much more that might be said, there is space here, it seems to me the whole question under discussion boils down essentially to a question of aim and method in the administration of compensation laws. To one at all familiar with the possibilities the conclusion is inescapable, from any broad point of view, that an accident board or commission whose aim is constructive service as opposed to mere opportunism, and whose method is that of intelligent study as opposed to guesswork, must include adequate statistics of accident experience under its jurisdiction as an indispensable part of its work.

Dr. MEEKER. Many of our commissions have nothing to do with accident prevention. May I digress, Mr. Chairman, and tell the story involving you and me personally. Mr. Andrus, at one of our meetings—the Boston meeting to be specific—felt that the discussion of accident prevention was beside the purposes of this association. He stated his view to me quite frankly. Of course, I opposed that view and I said to Mr. Andrus, “No matter if your law doesn’t give you authority for the prevention of accidents, it is up to you to work hand in glove in the closest possible cooperation with the agency that does or ought to do accident prevention work.”

Mr. Andrus is one of the most intelligent and forward looking and vigorous of all our commissioners, and I am not saying that for the purpose of handing out any bouquets. He went home and pondered upon the matter and at the next meeting he said he had been converted to the view which I had expressed. I do not take any credit. He deserves all the credit, and I think that the Illinois commission is going to show some mighty good practical results.

May I be allowed to make good my threat when I was giving my paper, to comment upon the use of statistics? I think Mr. Hatch, through overpressure in preparing his paper, neglected two or possibly three of the most important uses of statistics for the information of commissions and the public generally.

First, he makes no mention of medical statistics, a subject that stands as high perhaps as any other subject, to be dealt with by statistics. We know but little of medical statistics, the kind of injuries, what is done to them and the results. After we have got the medical results we need to follow up these injured men and find out what becomes of them. Second, we must follow the injured man after he is discharged from the hospital or pronounced cured by the physician. He is a worker with a handicap. Does he go back to his old employment? Perhaps his injury prevents this. If so, what becomes of him? Is he retrained for useful industrial employment? We need statistics as to the retraining of cripples for industry after we have the statistics of the results of medical, surgical, and hospital treatment.

Third, we must follow up the reemployed workers and find if they are reemployed for six weeks or six days only to be thrown on the scrap heap. Those three things must be included in the statistical information furnished to the commissions and put into general use.

The CHAIRMAN. Mr. Verrill was to lead the discussion on this paper, but as he is to present the report of the committee on statistics and compensation insurance cost, we won’t let him speak twice. Mr. VERRILL. In spite of Mr. Andrus’s suggestion that I do not discuss this paper there are one or two things I want to say that

are somewhat related to the paper, although not under the express subject of the paper.

The CHAIRMAN. Pardon me, but Mr. Verrill misunderstood me. What I said was that we wouldn't give him a chance to speak twice, although he can discuss the paper.

MR. VERRILL. What I have to say is with reference to the experience under the Federal compensation act in the United States—a subject which has been discussed at some of the meetings before this. The Federal act is somewhat peculiar as distinguished from most of the State acts. It was, at the time it was drafted, spoken of as a model act, and is often still spoken of in that way by some of the people responsible for drafting it. I think the people who drafted it were familiar with compensation more in a theoretical than in a practical way, although this is not to say they had not been thorough students of the subject from the theoretical side. It provides for the compensation of partial disabilities so long as the disability continues and while there is, in consequence, a loss of earnings. Now what is the result?

A permanent partially disabled man in very many cases goes back to work at the same rate of pay as formerly. He has been compensated during his period of total temporary disability, and this compensation ceases because he fails to show any further loss of wages. The result is, of course, later on he is thrown out of employment, and he can not receive compensation for any definite period.

The result is, many of these men with permanent partial disabilities, most of them of course of small degree—although there are a very considerable number of larger degree—are reemployed and are not receiving any compensation. In my judgment most of these people will never receive any more compensation. Some will shift employment under the same conditions for a time; will then get out of touch with the commissions; will forget their rights under the act; will not present any claims; and will not get anything.

During the period from the enactment of the law until the end of 1918 there were 774 cases of permanent partial disability under this act which had terminated in the way that I have discussed—that is to say, compensation had ceased. The amount of compensation which they had received was somewhat less than 58 per cent of the wage loss. The Federal act is a 66 $\frac{2}{3}$  per cent act, so that it works out somewhat less than 58 per cent of the wage loss, which had been paid in compensation. These injuries include several serious ones; for example, the loss of hands, of feet, of eyes, and a great many lose a number of fingers. It seems to me this is a serious difficulty in the compensation act. The Massachusetts scheme, of course, undertakes to meet this difficulty by paying compensation

for a fixed number of weeks in certain permanent partial disabilities, in addition to the compensation during the period of temporary total disability; but I question whether the Massachusetts act provides adequate compensation in such a case. It seems to me that 50 weeks' compensation is not adequate for the loss of an eye. I think if we examine their other fixed compensations there may be questions as to adequacy. I am not satisfied what the proper rate is. I am not satisfied what scheme should be accepted as the basis for amending the Federal compensation act; but certainly the act is not satisfactory so far as permanent partial disability is concerned. Perhaps these permanent partial disability cases, especially the most serious ones, receive less compensation than under almost any State act, and it is not right.

What method should be employed if compensation is paid for a fixed number of weeks I do not know. It does not seem to me that any scale has been established that can be regarded as acceptable. There is no scale on any scientific basis. There ought to be an attempt made. I know the Illinois insurance bureau has been considering this and has had some conferences, but I do not understand that they have been able to devise a schedule which they consider satisfactory. Indeed, a few weeks ago the director stated they had not put out any schedule, and that statement was made in reply to a request for a copy.

#### REPORT OF THE COMMITTEE ON STATISTICS AND COMPENSATION INSURANCE COST.

In presenting the fifth annual report of the committee it seems desirable to review briefly the work of the committee from its organization. The beginnings of the committee are to be found in the report of the first meeting of the association, held in Chicago, January 12 and 13, 1915. The meeting adopted a definition of a tabulatable accident, a standard form of a report blank for first report of accident, and a rule in regard to the time of submission of first report of injury. The meeting also provided for "a permanent committee to which can be referred the item or items that can not be disposed of at this time." Under this resolution the committee on statistics and compensation insurance cost was appointed, the immediate task assigned to it being to prepare as expeditiously as possible reports on uniform tables for the establishment of compensation costs, uniform classification of industries, uniform classification of causes of injuries, and uniform classification of nature of injuries. The meeting, perhaps with the thought that the work which it had assigned to the committee was a slight task, directed that the committee make its final report at the regular meeting of the association in September, 1915.

The first report of the committee submitted to the association held in Seattle, September 30 to October 2, 1915, dealt entirely with the classification of industries, the committee believing this to be the most important subject assigned to it, and finding the work more than sufficient to occupy all the time which could be given to committee work.

The committee unanimously agreed upon and submitted a complete classification of industries by divisions, schedules, groups, and classifications which had received the indorsement of an independent conference committee of statisticians. The report was unanimously adopted by the meeting of the association.

The second report of the committee was made at the Columbus meeting of the association, April, 1916, and printed in Bulletin 201, United States Bureau of Labor Statistics, August, 1916. This report included the classifications of industries amplified by the inclusion of the final subdivisions under each of the various industrial groups. It presented also classifications of causes of accident, location of injury, nature of injury, extent of disability, and degree of partial disability.

The third report of the committee was made at the Boston meeting of the association, August, 1917, and printed in the October number of the Monthly Review of the United States Bureau of Labor Statistics, as well as in Bulletin 248 of the bureau. The report presented standard statistical tables on accidents and compensation insurance cost recommended by the committee, with a scheme of severity weighting in terms of days lost as a standard measure of industrial hazard. Standard definitions adopted by the committee and included in the report covered, among other subjects, tabulatable, reportable, and compensable accidents, medical service, permanent total disabilities, permanent partial disabilities, and accident frequency, and severity rates.

The fourth report of the committee was made at the Madison meeting of the association, September 25, 1918, and distributed in mimeographed form. It has not yet been printed but will appear in bulletin 264 of the United States Bureau of Labor Statistics, which is devoted to the proceedings of the fifth annual meeting of the association. This report is devoted for the most part to a revision of the classification of the causes of accidents, with the addition of numerous explanatory notes, the object of which was to make the interpretation and use of the classifications by the various States more nearly uniform. The report also made some minor revisions of the classifications of accident by location and nature of injury and extent of disability.

During the past year the committee in continuation of its work has held one meeting, the regular duties of the members of the committee not permitting the giving of any more time to the work. This meeting was devoted to a consideration of the work of the committee in general and the drafting of standard tables relating to—

- (1) Cost of medical and hospital treatment, by nature of injury.
- (2) Duration of total disability in permanent partial disability cases.
- (3) Outline of the essential information in an investigation of industrial cripples.
- (4) Outline of an American remarriage table for industrial accident widows.



ice in including or excluding first-aid treatment should be explained, as well as the limitations of any law with regard to the period during which medical and hospital treatment is furnished or in regard to the limitation upon the value of medical and hospital treatment to which an injured employee is entitled. Any limitations in the data available for the purpose of a report should also be explained, in order that comparisons may not be made between any two States where the data are of such a character as to make comparisons unfair.

TABLE 2.—DURATION OF TOTAL DISABILITY IN PERMANENT PARTIAL DISABILITY CASES, BY NATURE OF PERMANENT DISABILITY.

Nature of permanent partial disability.	Total number of cases.	Duration of total disability.										
		Average days per case.	7 days and under.	Over 7 to 14 days.	Over 14 to 21 days.	Over 21 to 28 days.	Over 28 to 56 days.	Over 56 to 91 days.	Over 91 to 182 days.	Over 182 to 273 days.	Over 273 to 365 days.	Over 365 days.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)

Loss of—

1. Arm, right or major.
2. Arm, left or minor.
3. Forearm, right or major.
4. Forearm, left or minor.
5. Hand, right or major.
6. Hand, left or minor.
7. Thumb, right or major.
8. Thumb, left or minor.
9. Thumb and one finger, right or major.
10. Thumb and one finger, left or minor.
11. Thumb and two or more fingers, right or major.
12. Thumb and two or more fingers, left or minor.
13. One finger, right or major.
14. One finger, left or minor.
15. Two fingers, right or major.
16. Two fingers, left or minor.
17. Three fingers, right or major.
18. Three fingers, left or minor.
19. Four fingers, right or major.
20. Four fingers, left or minor.
21. Leg above knee.
22. Leg at or below knee.
23. Foot.
24. Great toe.
25. Great toe and lesser toe or toes.
26. One lesser toe.
27. Two or more lesser toes.
28. One eye (including loss of sight).
29. One eye with injury to other eye.
30. One ear.
31. Two ears.
32. Facial disfigurement.
33. All other dismemberments.
34. Impairment of use of member: Arm, right or major, etc.

TABLE 3.—INVESTIGATION OF INDUSTRIAL CRIPPLES.

In order that full information may be available in regard to industrial cripples, it is suggested that individual records be kept of each important case and that the essential details for such individual record are as follows:

1. Name or case number of employee.
  2. Date of injury.
  3. Age at injury.
  4. Occupation at injury.
  5. Rate of pay at injury.
- One year after injury, and to be repeated annually, the following details:
6. Still disabled.
  7. Recovered; unemployed because of disability.

Employed:

By same employer—

8. At what occupation?
9. Rate of pay?

By other employer—

10. At what occupation?
11. Rate of pay?
12. Lower rate of pay due to disability?
13. Has employment been irregular because of disability since employee was able to resume work?
14. Remarks.
15. Date of death.

As a summary table of this information, the following is suggested:

TABLE 4.—SUMMARY OF CONDITION OF INDUSTRIAL CRIPPLES AS DISCLOSED BY INVESTIGATION ONE YEAR AFTER INJURY.

Nature of permanent disability	Condition one year after injury.										
	Cases investigated.	Still disabled for work.	Number recovered unemployed.	Number employed.							
				By same employer.				By other employer			
				At same occupation.		At other occupation.		At same occupation.		At other occupation.	
				Same pay or better.	Lower pay.	Same pay or better.	Lower pay.	Same pay or better.	Lower pay.	Same pay or better.	Lower pay.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Loss of—

Arm, right or major.

Arm, left or minor.

Etc. (same as Table 2).

Impairment of use of 50 per cent or more—

Arm, right or major.

Arm, left or minor.

Etc. (same as Table 2).

It is intended that this table shall show the condition of the injured employee one year after injury and that investigation each succeeding year will be made. The facts as to the individuals included in the table, it should be pointed out,

can be comparable only if they represent conditions at a definite time after injury. It has seemed to the committee that the proper procedure was to make an investigation at the end of each completed year after injury for several years. There will thus be accumulated a mass of definite information in regard to what happens to an employee who has sustained a partial permanent disability. At this time little is known definitely in regard to this matter and practically all of the schedules for rating permanent partial disabilities have been based upon assumptions which may not be in accordance with actual experience.

TABLE 5.—REMARRIAGE EXPERIENCE OF EACH WIDOW TO WHOM COMPENSATION AWARDS HAVE BEEN MADE.

Individual records should be kept, showing the following details:

1. Name or case number.
2. Date of husband's death.
3. Age of widow at husband's death.
4. Number of children under 18.
5. Actual ages of children under 18.
6. Date of remarriage.
7. Date of death without remarriage.
8. Widow's nationality (or race).
9. Rate of compensation of widow and children.
10. Rate of compensation of widow and children after remarriage.

This information may be summarized by age as follows:

TABLE 6.—SUMMARY OF REMARRIAGE EXPERIENCE OF WIDOWS TO WHOM COMPENSATION AWARDS HAVE BEEN MADE, FOR EACH YEAR, BY AGE OF WIDOW AT DEATH OF HUSBAND.

Widow's age at death of husband.	Number of cases.	Average age of children under 18.	Number of widows married in—				Number of widows who died without remarriage.				Aggregate years of widowhood.	Remarriage rate per 100.
			First year.	Second year.	Third year.	Etc.	First year.	Second year.	Third year.	Etc.		
(1)	(2)	(3)	(4)	(5)	(6)		(7)	(8)	(9)		(10)	(11)

Under 20 years: No children; 1 child; 2 children; 3 children; 4 or more children.

20 to 24 years: No children; 1 child; 2 children; 3 children; 4 or more children.

25 to 29 years: Etc.

Same for each calendar as fiscal year of committee's experience.

The purpose of the committee in suggesting this table is to provide for the accumulation of actual American experience in regard to the remarriage of widows to whom compensation awards have been made. It is not believed that the Dutch remarriage table now in use can be assumed to be a proper measure applicable to American experience.

A resolution of the association which was adopted at the Chicago meeting of January, 1915, recommends the requirement that nonfatal accidents shall be reported within seven days after occurrence and fatal accidents within 24 hours after death. The committee now recommends in place of this resolution a new resolution for adoption by the association, to read as follows: "Except

as State laws otherwise require, all reportable accidents shall be reported to the proper State authority within 48 hours after the occurrence of the accident."

The committee considers that the classification of industries is still far from perfect and that it must undergo modification from time to time as industrial organization and industrial processes change and as premium rates are readjusted accordingly. The classification approved by the association should be the subject of continuous study by the committee and should be revised when changes warrant it. The committee has for some time been of the opinion that some further revision of the classification of industries as printed in Bulletin 201 was desirable, but that such revision was an undertaking to which more time would have to be given than was now available to members of the committee. After careful consideration the committee therefore recommends for adoption the classification printed in Bulletin 201 as revised by the informal committee on industry classifications and distributed by the National Workmen's Compensation Service Bureau. This revised classification is the one referred to in the report of the committee submitted at the annual meeting of the association, September 25, 1918. The committee feels justified in recommending the adoption of this classification for the reason that the informal committee which carried out the work of revision was presided over by the chairman of your committee, and two other members of your committee shared in the work of revision.

At the suggestion of the committee, Dr. Meeker has agreed that he will print as a bulletin of the United States Bureau of Labor Statistics the revised classification of industries, together with the other classifications recommended by the committee, with all the definitions which have from time to time been adopted. The entire work of the committee will thus be available in a single bulletin, and will be much more convenient for use than when scattered throughout a number of publications, as at the present time. It is hoped that such publications will lead to a more general use of the recommendations of the committee.

The inadequacy of the reports of the various boards and commissions concerning experience as to accidents, compensation, medical and hospital treatment, and administrative expenses is a subject which has given the committee serious concern. There has not been the promptness in making use of the committee's recommendations and in developing reports along the lines suggested which the committee had confidently hoped for. Commissions and others interested in compensation questions, especially such as concern the amendment of laws, are constantly confronted with questions concerning which accurate information based on actual experience should be available. Crude estimates, which are sometimes only guesses, and even impressions, are put forward as experience because the actual facts of experience have not been studied and compiled in a systematic manner. Commissions are, therefore, not in position to profit with reasonable promptness by their own experience or by that of other boards. All this is chiefly due to a penny-wise policy on the part of the legislature or of the commission. It tends to inefficient and unnecessary costly administration, which in the long run may bring discredit upon compensation laws.

The committee desires to urge a continuous study of compensation experience as the one safe guide to intelligent and efficient administration. As the first step in this study, everything possible should be done to secure the general adoption and use, so far as possible, of the tables which have already been recommended by the committee, with such elaboration of detail as may be necessary

to show most clearly the experience under the particular compensation act and to exhibit the merits or defects peculiar to the law.

[This report was accepted and the committee continued.]

E. H. DOWNEY *Chairman,*

*Special Deputy, Pennsylvania Insurance Department, Harrisburg, Pa.*

L. W. HATCH, *Vice Chairman,*

*Chief Statistician, Bureau of Statistics and Information, New York State Industrial Commission, Albany, N. Y.*

CHARLES H. VERRILL, *Secretary,*

*Commissioner, United States Employees' Compensation Commission, Washington, D. C.*

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W. H. BURHOP,

*Secretary, Wisconsin Compensation Insurance Board, Madison, Wis.*

T. N. DEAN,

*Statistician, Workmen's Compensation Board of Ontario, Toronto, Ontario.*

CARL HOOKSTADT,

*United States Bureau of Labor Statistics, Washington, D. C.*

C. B. HENSLEY,

*Statistician, California Industrial Accident Commission, San Francisco, Calif.*

ROYAL MEEKER,

*Commissioner, United States Bureau of Labor Statistics, Washington, D. C.*

E. E. WATSON,

*Chief Actuary, Industrial Commission of Ohio, Columbus, Ohio.*

Mr. VERRILL. With reference to the report of the committee on statistics and compensation insurance cost, I don't propose to read the entire report. It is the fifth annual report of this committee, the committee having been established at the time of the meeting of the association in Chicago in 1915. The committee at that time was expected to make a final report at the meeting of the association the next year. It is evident that the association in suggesting the work of the committee had little understanding of what an undertaking it was to take statistics of accidents and fix insurance costs.

I am sure that all of the compensation commissions have different ideas now of the difficulties involved. The committee at the next meeting of the association in Seattle submitted a brief report on the classification of industry, that having been considered the subject of the most pressing importance.

The second report of the committee was made at the Columbus meeting, and this went further into the classification of industries, amplifying by using all the various industrial groups that had been suggested at the preceding meeting. The first report was also made upon the causes of accidents in industries, the extent of disability and partial disability.

The third report of the committee was made at the Boston meeting, in 1917, and this report was printed in the October, 1917, number

of the Monthly Review of the Bureau of Labor Statistics. The report suggested for the first time standard statistical tables of accidents and compensation insurance costs. Standard definitions were also recommended by the committee in order to assist in the use of tables and secure a greater degree of uniformity.

The fourth report was made at the Madison meeting of the association. During the past year the committee has held one meeting, the regular duties of the members not having permitted more time for the work. The meeting was devoted to considering all work in general and the drafting of certain tables.

The report suggests forms of tables covering each of the subjects dealt with. I will not undertake to read these tables because they will, I have no doubt, be printed within a short time. The investigation of industrial cripples is of special importance and the committee has submitted an outline for an investigation, suggesting that investigation should be made and the facts obtained at a period a year after the accident, these investigations to be repeated annually, so we would have definite information. You will readily understand that an investigation should be made after a definite lapse of time, otherwise it would not be comparable, either within a State or from one State to another.

The investigation is intended to cover the facts of reemployment, if employed, and the reasons for failure to be employed if the employee has not secured employment. The question of whether the reemployed had the same employer, or some other employer in the same occupation, and the rate of pay, and the reason for any decrease if such is found. The duration of working life is also a necessary item, of great importance in these cases.

The reason for a remarriage table, covering the marriage experience of this country, the committee considers of great importance, because it is not believed that the Dutch table in use is representative of American experience. Of course, one can not prove whether it is or is not representative, but I think we will all agree that we would not expect that the conditions tend to result in marriage here the same as in a foreign country. What would seem desirable therefore is that the States would tabulate their experiences on uniform lines.

The resolution of the association which was adopted in June, 1915, recommended the requirement that nonfatal accidents should be reported within seven days after occurrence and fatal accidents within 24 hours after death. The committee has considered this rule again recently, and now recommends in place of this a new resolution for adoption by the Association. It is that "Except as State laws otherwise require, all reportable accidents shall be reported to the proper

State authorities within 48 hours after the occurrence of the accident."

The committee is of the opinion that the classification of all industries as printed in Bulletin 201 of the United States Bureau of Labor Statistics is far from perfect, and that it must undergo modification from time to time as industrial organization and processes change, and as real experience suggests the need of different classifications.

The committee has for some time been of the opinion that further revision of the classification is necessary, and has spent a good deal of time in discussing it, but such an undertaking at the present time requires a greater number of meetings than are possible to be held. The committee is more ready to make this recommendation in view of the fact that the committee which carried out this work was presided over by the chairman of the committee on statistics, and two other members of the committee shared to a considerable extent in the work of revision. The committee is glad to be able to say that Dr. Meeker has agreed to print the classifications of the committee with its findings, permitting us to bring into one pamphlet all of the results of the committee. It is believed that bringing together all the material in this way, making it so much more valuable, will result in a much larger use of the recommendations of the committee.

The committee's report would not be complete without some reference to the inadequacy of the reports of the State boards and commissions at the present time. It is fully realized that the organization of statistical work requires time. It requires experience of the commission in its own work before they are prepared to complete their organization, before they are prepared to give any great amount of time or money to statistical work, but it does seem that with most of the commissions the time has arrived when the value of such work should be realized and when taken up should be put into larger use. So far as I know only one State has yet made an attempt to compensate its cripples. Oregon has done this and I think the State is to be congratulated for its attempt, although perhaps in some respects it may fall short of what they will expect to do in another year. The experience of a small State like Oregon is somewhat inadequate for drawing conclusions and guiding other commissions, but it is certainly a most valuable contribution and should suggest to other commissions what they ought to do in the same direction.

The committee desires to urge upon commissions that as a first step everything should be done to secure the general adoption and use of the tables which have already been recommended by the committee, with such elaboration of detail as may be necessary to show

most clearly the experiences, under the broad compensation act, and to exhibit the merits or defects.

Mr. MARSHALL. I move that the recommendation for change in the matter of reporting accidents be adopted.

[Carried.]

Mr. MARSHALL. I move that the report of the committee be accepted and printed with the proceedings and that the committee be continued.

[Carried.]

## PROPOSED METHOD OF COMPARING WORKMEN'S COMPENSATION COSTS UNDER VARIOUS LAWS.

BY T. N. DEAN, STATISTICIAN WORKMEN'S COMPENSATION BOARD, ONTARIO.

With the existence of various and varied workmen's compensation enactments, the comparison of laws, especially in regard to costs and benefits, requires examination of the fundamental characteristics of what are generally conceded to be the best compensation laws, individually as well as typically. Such examination would probably result in the definition that the best compensation law is that enactment which aims to secure the greatest ultimate social good and most adequately and speedily to compensate the greatest majority of injured workmen and their dependents for financial loss incurred through industrial accidents at the least cost to their employers and to the society to which they belong.

That industrial accidents, costing something to society in material loss, damage to plant equipment and morale of working force, as well as to human productive capacity, should be reduced to the least possible number and severity is, as it were, axiomatic and equally so the proposition that disabilities resulting from preventable accidents should be reduced to the irreducible minimum. With as little delay as possible, with as low costs as are compatible with efficient administration, and with absolute security for future payments, compensation should be paid for remaining economic loss, such compensation to be as fully adequate as possible.

Unfortunately, industrial accident prevention work, the purpose of which is the reduction of accidents in number and severity, has not produced, nor, by its very nature does it seem capable of producing, data which enables any accurate comparison of systems and the determination of the most effective safety provisions to be found in compensation enactments. Such determination, must, it would seem, remain a matter of personal opinion, or, at best, of ex-cathedra judgment. Again, not always does safety endeavor lie wholly within the jurisdiction of compensation boards. Indeed, some jurisdictions in the compensation laws of which no, or meager, provisions have been made for accident prevention work through the establishment of other agencies have produced magnificent results.

Matters of quality of medical and surgical attention, proper prosthesis, and instruction in the use of prosthetic appliances, vocational reeducation, and speedy restoration of disabled to industry, and

of employment service for disabled, handicapped, and crippled workers, for the most part, lie wholly without the sphere of control of bodies administering workmen's compensation laws. In the last few years these subjects are beginning to emerge from the darkness of obscurity and at last are being considered by those who deem it a public duty to emphasize those things which make for social good.

Certain random attempts, and at least one serious one, have been made to devise some formula for measuring the adequacy of compensation benefits to the actual economic loss sustained by injured workmen and their dependents. It has been proposed that, with a multiplication of the percentage of workers gainfully employed by the percentage of the rate of benefits to actual loss, the resulting product will give the adequacy of benefits to actual loss. Such plan seems open to criticism. Estimates must be made as to the number of persons coming under the provisions of the act and the impossibility of determining the unit "person" precludes much value in such estimates. This multiplication takes no cognizance of forms of indemnity which may, and oftentimes do, apply to industries, occupational groups or establishments without the coverage of the compensation law.

It would seem that the only comparative feature of the adequacy of compensation laws is in the rate at which benefits are paid. A law which awards 65 per cent of wages during temporary disability does not necessarily provide higher benefits than the law which awards 55 per cent, because differences in waiting periods, in limitation of medical services, in awards to those permanently disabled, and to death dependents, in amount of funeral benefits, and so on, greatly affect the net ratio of awards payable to the actual economic wage loss. One State, for instance, with a schedule of permanent disability ratings which purports to pay a certain specified rate for each per cent of permanent disability, although rating a certain disability at 33 per cent of earning capacity, pays for that disability at 17.0 per cent of what it would pay for total extinction of earning capacity.

It is suggested that "rates of benefits" should be reduced to a common basis, indicative of actual rather than potential economic loss, and that a schedule of comparisons should be drawn up before postulation of the adequacy or inadequacy of the benefits under any particular law or challenge of the adequacy and generosity of any one law as compared with any other.

In comparing benefits, the law differential plan or its modification—a plan almost too well known and understood to require elaboration—seems an adequate method. Briefly stated, the law differential plan is to measure benefits in terms of a common experience

and, by transposition, to make the benefits of one law unity and the benefits of all other laws compared proportional thereto. In measuring costs to employers, or rates charged, to use the insurance expression, rates for like classifications of industry might be compared in terms of a common industrial distribution and differentials erected. A simple mathematical process, involving the division of the benefit differential into the rate differential for each jurisdiction, reduces to a single statement (comparative differential) the comparison of costs and benefits provided that both unity differentials be for the same jurisdiction.

Following these suggestions a table has been constructed to illustrate the proposed method. The attempt was made to bring all jurisdictions to a parity as regards benefits, and to determine what such benefits would cost under various systems of insurance. It can not be overemphasized that there is no suggestion of comparing, for example, what employers in New York pay for benefits in terms of the New York law with what employers in Ontario pay for benefits in terms of the Ontario law. The comparison is for the purpose of illustrating a proposed method of determining what employers in New York and in Ontario would pay for equal benefits under present systems of insurance and rating.

Differentials were constructed as follows:

(a) *Benefit differentials.*—The amount of money required for the benefits accruing under the workmen's compensation act of Ontario for 1917 (calendar year) was taken as unity. This experience (Ontario, 1917) was then scaled according to the provisions of the Ohio, the Nova Scotia, and the Texas compensation acts, and the results were proportioned to the cost of the Ontario benefits. Differentials for other States, including Texas, had already been calculated by the augmented standing committee of the National Workmen's Compensation Service Bureau. For the States used in the comparison these differentials were proportioned to the unity differential for Ontario.

(b) *Rate differentials.*—The pay-roll distribution for Ontario for 1917 was considered as basic. Classification by classification the published manual rates were taken for each jurisdiction and the total cost of insuring the Ontario exposure was found. The rate was found for each \$100 of pay roll for each State. This average rate over the whole schedule was proportioned to the rate for Ontario as unity.

(c) *Comparative differentials.*—The Ontario benefits and rates were taken as unity ( $100 \div 100$ ), and those of all other jurisdictions proportioned thereto.

Four qualifications of the accuracy of the results naturally appear:

(1) The differentials of the National Workmen's Compensation Service Bureau were accepted as accurate.

(2) The pay-roll distribution for Ontario was accepted as standard for all jurisdictions; the Ontario method of rating an industry as a unit was used.

(3) The material antedates 1918, and it is to be observed that rate changes or law amendments including and subsequent to that year might in effect modify the comparison.

(4) For United States jurisdictions, Ohio excepted, rate figures apply to stock companies only.

The table follows:

Jurisdiction.	Per cent rate of benefits.	Benefit differential.	Rate differential.	Comparative differential.
Illinois.....	42.89	79.34	236.65	298.27
Indiana.....	39.15	72.42	185.70	256.43
Michigan.....	29.94	55.38	122.43	219.27
Minnesota.....	38.86	71.88	194.74	270.92
New York.....	54.98	101.70	366.47	360.34
Nova Scotia.....	48.88	90.31	( <sup>1</sup> )	( <sup>1</sup> )
Ohio.....	55.41	102.50	119.97	117.04
Ontario.....	54.06	100.00	100.00	100.00
Pennsylvania.....	30.22	55.91	106.82	191.06
Wisconsin.....	48.65	89.99	300.72	334.17

<sup>1</sup> Data not publicly available.

From this table one coordinate fact may be drawn. In 1918 in Ontario 98.45 cents out of every dollar collected from employers was for benefits to injured workmen and their dependents. If this amount, multiplied by 100, be subtracted from the comparative differentials, the excess of cost over benefits for each jurisdiction might be obtained (Nova Scotia returned \$97.15 as benefits out of \$100 collected, according to the published report of the workmen's compensation board of that Province). Transposing a little, it is comparatively simple to obtain the per cent relation of costs to benefits. The results appear as follows:

To return \$100 of Ontario benefits costs in Illinois, \$302.93; in Indiana, \$260.46; in Michigan, \$222.72; in Minnesota, \$275.18; in New York, \$366; in Nova Scotia, \$102.93; in Ohio, \$121.85; in Ontario, \$101.57; in Pennsylvania, \$194.06; and in Wisconsin, \$339.43, although it is only fair to add that in Ohio created surplus might be in whole, and has been in part, returned to employers.

That these comparisons do not shoot too wide from the target is perhaps evidenced by the following two excerpts from letters received by the Ontario Workmen's Compensation Board from employers:

We have recently been doing some work at Dearborn, Mich., for Mr. Henry Ford, and when we came to inquire into the Michigan workmen's compensation

law we found it was a complicated proposition—one that required the services of a lawyer to explain. The worst feature, however, is the fact that they charged us \$4.21 per \$100 of pay roll instead of \$1.50, which is the Ontario rate, and the \$4.21 does not include any medical attention.

I have also been operating under the New York State Compensation Board, and, while there may be some difference in the laws and the amount of compensation given, I do not think these are material, whereas the New York rate is anywhere from five to nine times as high as the Ontario rate.

In the above comparison it is extremely evident and unavoidably noticeable that the jurisdictions which return as benefits the greater part of costs are those jurisdictions which possess exclusive State insurance schemes—namely, Nova Scotia and Ontario—and that the jurisdiction which most closely approaches them is Ohio, which is almost an exclusive State fund, although operating on the individual liability plan. The differences are so startling as to require some explanation.

Rates are based, in Ontario and Nova Scotia, on what it costs to give back the benefits to the workmen, less, in Ontario, a portion of expenses of administration given by the Province. Rates as promulgated by the National Workmen's Compensation Service Bureau for stock companies are made up on the following formula:

$$(A+B) \times \left( \frac{C \times D \times E \times F \times G \times H}{1 - (J+K+L)} \right) + M = R.$$

A=Basic pure premium.

B=Industrial disease pure premium.

C=Law differential.

D=Increasing cost factor.

E=Underestimate of outstanding losses factor.

F=Industrial disease factor.

G=Schedule rating factor.

H=Experience rating factor.

J=Expense loading.

K=Profit loading.

L>Loading for maintenance of administrative commission.

M=Catastrophe loading.

R=Final rate.

Or to make a difficult matter more simple and quoting directly—

Example: Suppose that it is desired to secure a final rate on a classification subject to schedule rating which has a basic pure premium of \$0.20 and which presents a specific industrial disease hazard for a State, the compensation act of which covers industrial diseases and for which the following factors and loadings have been adopted:

Law differential .....	1.33
Increasing cost .....	1.275
Age of act. ....	1.125
Abnormal industrial activity .....	.15

Underestimate of outstanding losses.....	1.02
Industrial disease factor.....	1.01
Schedule rating.....	1.099
Experience rating.....	1.01
Management expenses and taxes..... per cent..	40
Profit..... do.....	1½
Special tax for maintenance of industrial commis- sion..... per cent..	1
Catastrophe loading.....	.01
Industrial disease, specific pure premium.....	.04

Substituting in the formula—

$$(\$0.20 + \$0.04) \frac{1.33 (1.275) (1.02) (1.01) (1.099) (1.01)}{1 - (.40 + .015 + .01)} + .01 = \$0.8188$$

the final rate for this classification in the State selected would be \$0.82.

(It is, perhaps, a small detail that the \$0.8188 in the above equation should be \$0.8194.)

The net result of the equation submitted is that by calculation a rate of 82 cents is achieved from a basic pure premium (compensation) of 20 cents and a law differential of 133. It is certainly true that the increasing age of acts may be productive of extragenerous interpretation of statutes by compensation boards, but it is equally true that any promise that there will be underestimate of outstanding losses when followed by a mathematical expression of what that underestimate will be is absurd. It matters but little to the workman or his employer what method of calculation is used; the true test is "how much of what the employer pays goes in compensation"; or as Kipling aptly said—

Oh, what avails the classic bent  
Or the cultured word  
Against the undoctored incident  
That actually occurred.

It is necessary only to compare the two systems of insurance—the exclusive State fund with the stock company, mutual, or State-managed fund to see clearly that the advantages lie with the exclusive State fund. Compare the published rates, classification by classification, and a clear demonstration of costs is afforded.

The exclusive State fund under the Ontario plan has no profits, no taxes, no maintenance of industrial commission loading; it does not pay for organizations for propaganda; it pays nothing to get business, for the law which established it brought its business; there is no need for actuarial and statistical acrobatics to provide plans for charging the employers more than 5 per cent of the gross rate for expenses of administration.

The exclusive State fund under the Ontario plan is administered by an independent board, with no reason for seeing else than that the workman gets the compensation to which he is justly entitled and that the employer pays a minimum of rate which will provide

that compensation. There is no incentive to "short-change" the workman or his dependents, no need to split hairs or take advantage of legal technicalities.

The exclusive State fund under the Ontario plan provides as security for future payments to injured workmen and their dependents the taxing power of the Province. Security under the private insurance companies depends upon the solvency of the insurance company and the ability of the employer to pay if the insurance company fails to pay.

The employer, under the Ontario plan, pays his assessment and his liability ends. He has not the probability to face that, if the insurance company fails; he will again pay not what he has already more than paid for but the compensation due in the individual case of injury.

The Ontario plan provides a continuous and consistent body for the computation of allowances—one body with jurisdiction over the whole Province.

Under the Ontario plan interest on current funds, the production of earned interest rate over discount rate on reserve funds, goes directly to reduce rates and not to profit-and-loss account. Surpluses due to any conditions, and especially to such industrial conditions as have lately produced large surpluses, belong to employers and not to stockholders; or, as Dr. Downey has so ably put it, "No insurance carrier was ever yet embarrassed by an accumulated surplus."

The chief point of the Ontario plan perhaps is that it has done away with litigation, litigation expenses, and litigation delays.

For these reasons and for others which might be amply demonstrated by statistical experience, and even allowing for error in method of the comparison suggested, the conclusion has been forced that, ably administered, the exclusive State fund plan is the best system of taking care of industrial accidents, and that the law establishing such plan is the best type of compensation law.

The CHAIRMAN. How do you account for that great disparity of figures between Pennsylvania and Illinois?

Mr. DEAN. I think, Mr. Andrus, my task is to present the figures. I would not agree to give an offhand reason as to that. I would be glad to do so if you will write me.

A DELEGATE. Will any representative of one of the industrial accident commissions present tell me at the conclusion of this meeting if his State has any law requiring a safety contrivance on elevators so that when the door is open it can not go either up or down? We are very much interested in that in California. We have had about 28 deaths in two years and 13 deaths since January 1, and we contemplate issuing an order that all elevators must have such a safety contrivance.

**FRIDAY, SEPTEMBER 26—MORNING SESSION (CONCLUDED)—  
(BUSINESS MEETING).**

**CHAIRMAN, GEORGE A. KINGSTON, COMMISSIONER WORKMEN'S COMPENSATION  
BOARD OF ONTARIO.**

[The report of the committee on the election of officers and the place of meeting of the 1920 convention was presented and adopted.

Mr. Will J. French, member Industrial Accident Commission of California, presented the report on resolutions. The first three resolutions were of a formal nature and were adopted without discussion. The fourth resolution, on benefits and medical treatment, brought forth considerable discussion.]

The CHAIRMAN. The last resolution read by Mr. French brings up rather a large order for such a comparatively small number of the delegates as are left at this meeting. Is it the wish of the meeting that we should consider this fourth resolution in detail at this time and go on record adopting the principle?

Mr. FRENCH. I am in favor of it, but I think the subject is so important and the time so short, and the attendance so comparatively slight, that I would like to move that the resolution be referred to the incoming executive committee with instructions to report at the San Francisco convention.

Mr. ANDRUS. I second it. While I am in favor of practically every demand mentioned in that resolution, we must not lose sight of the fact that the boards are administrative boards.

Mr. WILCOX. I am not clear in my own mind whether it is advisable for us to adopt this resolution in whole or in part. It seems to me that some of these things we can say we are in favor of and go back home to our constituencies and feel that we have performed service. The first one the committee named is that of full medical attention. I wonder if it makes any difference to us just what the situation is back home. I wonder if there is any man a member of this association that is not willing to go on record here or anywhere in favor of full medical attention. There is one significant thing: I never have yet heard a single person get up and defend a lower compensation rate on any one thing. You feel chagrined that your State is down low instead of up high. When it comes to the consideration of medical service, I know the time was when I was embarrassed because Wisconsin cut off benefits after 90 days, because I knew the people cut off then were those who needed the benefits.

There are some of the others which I do not think will do any harm for us to consider right now.

The CHAIRMAN. That is the least contention.

Dr. MEEKER. Would this perhaps be a solution: That the resolution as presented be printed and distributed to the full membership with the request that the commissions record their views on the resolutions for guidance of the executive committee in formulating its report to be presented at the next convention?

Mr. PRICE. Do I understand the amendment is merely to use the resolution as suggested and not as in any way representing the views of this meeting? I do not think that the workmen's compensation laws can be framed by a few members putting together a few resolutions. I feel we are perhaps going outside our proper sphere if we meddle too much in that. I would hold up both hands for full medical attention, but I do not say that real good is going to be gained. We all differ in the laws we have to administer and the way in which we think they should be administered. I do not think it will do any good to try to get two or three members together to draw up resolutions.

Mr. McHUGH. In the first place, we have not time now at this late hour to go into a discussion of the merits of the question. The idea was that this report be presented, sent to the individual boards, and their suggestions invited upon it. They would then have ample time to consider it and write their views in detail. Furthermore, if we had the time to consider them at this juncture, a great many of the delegates have already gone home, and it would only be the part view of this convention. Therefore I think the suggestion of Dr. Meeker a very good one.

Mr. WILCOX. I am not objecting to that plan. I do not like the executive committee to pass on this without knowing what I think of it. I think the boards should have an opportunity to express an opinion on it.

Mr. FRENCH. My idea was not to have the executive committee pass on it, but simply prepare a report for the next convention.

Mr. ANDRUS. I agree with Mr. Price that we are treading on dangerous ground. I think I can indorse everything except the waiting period, and our act was amended at the last session so that where the disability extended over four weeks there would be no waiting period. We should all agree to that. I would not want to be put on record in Illinois of opposing the waiting period we have. I think this publicity is a good thing, but when one commission gets to telling another commission what it should put in its act we would not be accomplishing a good purpose. I think we can accomplish the same purpose when we talk it over.

The CHAIRMAN. Then, do I understand that the sense of the resolution is that these suggestions by Mr. Meeker are to be referred to the incoming executive committee, and somebody also suggested that in the interim it be distributed to each member of the association as a questionnaire.

Dr. MEEKER. My intention was that the resolution should be printed and distributed to the various commissions, requesting them to send their views for the guidance of the executive committee in formulating its report.

The CHAIRMAN. That is what I had in mind, although I used the word questionnaire. Is that the pleasure of the meeting that it be disposed of in that way?

[Carried.]

[Mr. Andrus presented the report of the audit committee, stating that the treasurer's report was found correct.]

Mr. ANDRUS. The question of the reduction of dues from \$50 to \$25 was referred to this committee, and after careful consideration of the matter we have come to the conclusion that this ought not to be recommended, for two reasons: One of them is we think some of the States ought not to pay so much. Dr. Meeker tells me that they are unable to get some States to pay the money, and the commissioners have to pay it out of their own pockets. We also know that we are a bankrupt institution and are living on the Federal Government and it might be a good thing to have money on hand. If the State pays then it is no hardship to the State, and it gets its money's worth. The proceedings of these meetings are the only practical help I had when I took office a few years ago. One other thing and that is with regard to Dr. Meeker. We, and you, of course, know the work which he has done. We therefore recommend that the fee be kept at \$50, and that the executive be authorized to reduce it in States where the commissioners are compelled to pay it out of their own pockets; and that the amount of \$300 be paid Dr. Meeker as partial compensation for the work he has done this last year, and \$300 covering next year, and I make a motion to that effect.

Mr. WILCOX. I am very glad that Mr. Andrus made this suggestion. I was in hopes that the resolutions committee would have made some reference to Dr. Meeker's splendid service on behalf of the association, but as Mr. Andrus has very well said this association could not get along without him, and about 75 per cent of its success has been due to him. I am very glad that the suggestion has been made to express our appreciation to Dr. Meeker for his services in this more tangible form than is done merely by a resolution. I therefore second the motion.

The CHAIRMAN. It is moved that the executive committee be authorized to present the sum of \$300 to Dr. Meeker for past services,

and to cover expenses of his office for next year an honorarium of \$300.

[Carried.]

Mr. McHUGH. I feel that the record of this meeting will be incomplete if it does not contain a formal expression of the very great appreciation that we feel for the indefatigable services that have been rendered by Dr. Meeker, not only to this convention but throughout the entire year. There never has been a time when any commission desired to obtain information that it has not been cheerfully provided with alacrity by him, and I therefore move that the convention express its very deep and profound appreciation of his valued services.

[Seconded by Mr. Marshall.]

The CHAIRMAN. It is moved that a resolution of appreciation be passed for the services rendered by Dr. Meeker.

[Carried.]

The CHAIRMAN [to Dr. Meeker]. Allow me to express to you what you have already heard—one resolution which gives you something tangible and the other which expresses the sentiments of the convention. Dr. MEEKER. Does this require a speech? I have no words in which to express my feelings. Therefore I shall not attempt to use any words, more than to say a simple thank you. I am a bit embarrassed about the honorarium. I certainly appreciate it and the sentiments that were expressed by you, Mr. President, in speaking of it. I appreciate much more than the honorarium the appreciation as expressed in the resolution moved by Mr. McHugh. I can say no more. I thank you.

Mr. WILCOX. It seems to me that we ought to at once ask the executive committee to work out some uniform basis whereby the question can be settled whether or not a man who works in Michigan is covered by the Wisconsin act. These cases are arising, and I see no way of accomplishing anything that is really satisfactory unless we prepare a uniform bill, and each one of us could undertake to have our legislatures adopt it. I make as a motion that the executive committee apply itself at once to the matter of determining upon a uniform bill to take care of jurisdictional conflicts.

Dr. MEEKER. May I ask Mr. Wilcox if this is to be referred to the executive committee? We already have a committee upon jurisdictional conflicts, which I recommend be continued and enlarged. It would properly fall within the jurisdiction of that committee.

Mr. WILCOX. I have no particular concern whether it goes there or not, except that we should have some one to do it.

The CHAIRMAN. That committee consists of two men. I would suggest that Mr. Wilcox be added to that committee to take the place of Mr. Mitchell and have anyone else suggest another.

[Moved and seconded that appointment be left to the executive committee.]

The CHAIRMAN. The suggestion is that it be left to the executive committee to enlarge the committee on jurisdictional conflicts, and that this matter be referred to it.

[Carried.]

Mr. WILCOX. I move that the executive committee provide ways and means for a study of the proper basis for the rating of eye disabilities and report back to the various commissions.

Dr. MEEKER. It has been the custom of this association to elevate the vice president of one year to the presidency the following year, and this is a very good plan. It accomplishes the results that have been achieved by the American Medical Association by electing their president a year in advance. Since precedent indicated that Mr. French would be the president for 1919-20, he and I have been considering some subjects for the program of the next conference, because Mr. French lives far away from Washington, or rather I live far away from San Francisco. It is necessary for us to exchange ideas and thrash them out. We were contemplating devoting a whole medical session to the consideration of a special topic, and eye injuries was the thing that seemed to be most in need of such attention at this time. I wonder if it would not be better to leave the matter to be handled by the executive committee in its own way, without any instructions, to report at the next meeting.

Mr. WILCOX. I know this. There is no use unless we can do something and do it promptly. The Wisconsin commission has to adopt its own schedule, and I would rather wait and all adopt the same thing at once.

I am firmly convinced that it is only a matter of getting the proof and getting together a considerable number of the experts of this country and working out the proper schedule for the rating of disabilities.

Dr. MEEKER. I think it is a much more difficult job than Mr. Wilcox anticipates. Inquiries have come to me—I do not remember if they emanated from Wisconsin, but I think it was from Chicago—asking for a schedule for eye injuries, and my Bureau could not give any satisfaction. I side-stepped it and sent the inquiry on to the chairman of the medical committee. It is a job of very great difficulty, and I do not believe the executive committee, with all the veneration I have for that body, because of being a member—I do not believe they have the information and the ability to do the thing that is so needful to be done and to be done promptly.

Mr. ANDRUS. The situation is this—that the eye specialists themselves can not agree. A doctor in Chicago prepared a table and

wanted us to adopt it, and the reason was to get other doctors to see as he did. The medical profession can not agree, and they want us to come in and set a standard. It is the duty of the medical examiners to reconcile these things and find out what the profession will agree on. Now, for us to step in where the profession can not agree seems to me the height of absurdity, and anything Mr. Wilcox said has not changed my mind on that question. For a committee to get to work and tell the doctors what they should do, I can not understand at all. Certainly this executive committee never will agree unless I can be converted.

Mr. WILCOX. I can not see why the executive committee can not get these experts together and get them to agree on something tangible. I do not see why there is any necessity for delay. If it is a purely medical thing, we will not accomplish anything on the subject at the California convention. I am convinced that the commissions are going to get lost if they go on permitting the closing out of claims with the present unsatisfactory state of rating on eye disabilities.

Dr. MEEKER. I was asked to call the attention of the commissioners to a publication that is just issuing from the press by the National Industrial Conference Board entitled "Workmen's compensation acts in the United States," which can be secured for the sum of \$1. It pains me to observe that much valuable material has been taken in this publication from the reports issued by my Bureau—reports that are as free as the water to those who ask for them. Material has been taken in quantity from our reports, published and sold for good, hard money and no credit given to the Bureau whatsoever. I am not saying this is what has been done in this report. Certainly it would have been an act of courtesy to have referred to our reports which give the laws in full of all the States and of the Provinces in Canada. However, this book may be all right, and may be you should get it.

The CHAIRMAN. I want to say what a pleasure it has been to us in Ontario, and more particularly Mr. Price and myself in connection with the Ontario board, to have this convention in Toronto. I hope the convention as a convention will be regarded as a success. It has entailed a very considerable amount of work, but that has been a real pleasure. If the convention's meeting here has contributed anything to the cause of compensation, we shall be rewarded. I only wish for Mr. French, the incoming president, the cooperation which you have accorded to us with relation to the next convention. In accepting the report of the committee on resolutions I neglected to declare Mr. French the president elect for the ensuing year and do so now. This will also give Mr. French a chance to say something.

Mr. FRENCH. The presidency is accepted by me with a great deal of pleasure. It would be impossible to accept it otherwise, because I appreciate the honor. It has been my good fortune to be associated with this type of legislation for a good many years. It was not until workmen's compensation came in that we were successful in changing the old liability system. Consequently I think I have had a somewhat wide experience in this particular field, and I shall do the best I can to have the international association continue on its upward course and to give my sincere service. I trust that everyone present and all those who were in attendance at this convention will come to San Francisco. I hope you will let me know you are coming, because I will have some one meet you at the ferry and see that you are well looked after all the time you are in San Francisco. We want to give you a real California invitation and extend to you real California hospitality. Whatever can be done by the California Industrial Accident Commission will be done. It will not be possible for me to excel the treatment given us by Mr. Kingston. I do not think I have ever attended a convention where the president was so good-natured and busy all the time. I am hopeful that there will be some tangible evidence given of this opinion, which I know is universal, of Mr. Kingston's splendid services. I thank you.

Dr. MEEKER. May I have the honor of first addressing the new president and suggest that we hold here immediately after adjournment a meeting of the new executive committee for the purpose of filling vacancies in the standing committees?

Mr. PRICE. I would like to add an appreciative word to what Mr. Kingston has said. We have very much felt the honor that has been conferred upon us by having had this convention meet here. I have not been very much in evidence as to taking part in the proceedings, but I have been very deeply impressed with the earnestness shown by the members of the convention in respect to the work in which we are all engaged. And I have been very deeply impressed with the earnestness shown by the Bureau of Labor Statistics not only at the convention but also in correspondence and other ways. I can only repeat again that we esteem it a very high honor indeed to have had this great convention in our Province.

Mr. WILCOX. I have a record of having attended every single meeting of this association. It was organized in Lansing, Mich., in 1914, and I have since attended every meeting. Mr. Kingston is next to me, coming for the first time at Seattle, and I think he was the only one whom I have always met from Seattle on. I count this convention—I am in position to speak with respect to all of them—the best in all its results of any that I have attended. I am disposed to think that that is more largely due to Mr. Kingston than we are disposed perhaps on the outside to think. The president has much to do with

how the thing goes during convention week. You may arrange your programs, but they have to be pulled off after they are arranged. I move that this convention express our appreciation to Mr. Kingston.

Mr. FRENCH. You have heard the motion. [Carried.]

Mr. KINGSTON. I thank you sincerely for this expression of your kind feelings toward me. I will not say much more than "I thank you," and it has been a very, very great pleasure to be associated with this organization continuously since the Seattle meeting. I have enjoyed and I appreciate very much the warm friendships since that first meeting four years ago. It has been a matter of regret that members of the American commissions fall by the wayside by reason of certain political conditions arising in their States, and we lose occasionally some of the very best men, and the compensation cause loses some of the best men. I want at this time to express my great pleasure at learning that notwithstanding political opposition in the State of Wisconsin Mr. Wilcox has just been reappointed for another term of five years by the governor, who found that public sentiment in the State of Wisconsin was so strong that he practically had to reappoint him to the position which he has so well filled. I desired to take this opportunity of just saying that.

[The convention then adjourned.]

## OFFICERS AND MEMBERS OF COMMITTEES FOR 1919-20.

President, Will J. French, commissioner, Industrial Accident Commission, San Francisco, Calif.

Vice President, Charles S. Andrus, chairman, Industrial Accident Commission, Chicago, Ill.

Secretary-treasurer, Royal Meeker, United States Commissioner of Labor Statistics, Washington, D. C.

### EXECUTIVE COMMITTEE.

President, Will J. French, Industrial Accident Commission, San Francisco, Calif.

Vice president, Charles S. Andrus, Industrial Accident Commission, Chicago, Ill.

Secretary-treasurer, Royal Meeker, United States Bureau of Labor Statistics, Washington, D. C.

T. J. Duffy, Ohio Industrial Commission, Columbus, Ohio.

William W. Kennard, Industrial Accident Board, Boston, Mass.

George A. Kingston, Workmen's Compensation Board, Toronto, Ontario.

W. A. Marshall, State Industrial Accident Commission, Salem, Oreg.

Charles H. Verrill, United States Employees' Compensation Commission, Washington, D. C.

### COMMITTEE ON STATISTICS AND COMPENSATION INSURANCE COST.

Chairman, E. H. Downey, Insurance Department, Harrisburg, Pa.

Vice chairman, L. W. Hatch, Bureau of Statistics and Information, New York State Industrial Commission, Albany, N. Y.

Secretary, Charles H. Verrill, United States Employees' Compensation Commission, Washington, D. C.

Miss Inez F. Cooper, Wisconsin Industrial Commission, Madison, Wis.

T. N. Dean, Workmen's Compensation Board, Toronto, Ontario.

R. J. Hoage, United States Employees' Compensation Commission, Washington, D. C.

Carl Hookstadt, United States Bureau of Labor Statistics, Washington, D. C.

William Leslie, New York State Insurance Fund, New York, N. Y.

Royal Meeker, United States Bureau of Labor Statistics, Washington, D. C.

R. M. Pennock, Bureau of Workmen's Compensation, Harrisburg, Pa.

W. P. Ratliff, Industrial Accident Commission, San Francisco, Calif.

Oscar M. Sullivan, Department of Labor and Industries, St. Paul, Minn.

E. E. Watson, Industrial Commission, Columbus, Ohio.

### COMMITTEE ON JURISDICTIONAL CONFLICTS.

Chairman, Royal Meeker, United States Bureau of Labor Statistics, Washington, D. C.

Vice chairman, Fred M. Wilcox, Wisconsin Industrial Commission, Madison, Wis.

T. J. Duffy, Ohio Industrial Commission, Columbus, Ohio.

W. A. Marshall, State Industrial Accident Commission, Salem, Oreg.

A. J. Pillsbury, Industrial Accident Commission, San Francisco, Calif.

Charles H. Verrill, United States Employees' Compensation Commission, Washington, D. C.

MEDICAL COMMITTEE.

Chairman, F. D. Donoghue, M. D., Industrial Accident Board, Boston, Mass.

Vice chairman, Morton R. Gibbons, M. D., Industrial Accident Commission, San Francisco, Calif.

G. H. B. Hall, M. D., Workmen's Compensation Board, Vancouver, British Columbia.

Raphael Lewy, M. D., Bureau of Workmen's Compensation, New York, N. Y.

P. B. Magnuson, M. D., Industrial Commission, Chicago, Ill.

M. B. Morrison, M. D., Workmen's Compensation Board, Halifax, Nova Scotia.

J. W. Mowell, M. D., Industrial Insurance Department, Olympia, Wash.

F. H. Thompson, M. D., State Industrial Accident Commission, Salem, Oreg.

J. W. Trask, M. D., United States Employees' Compensation Commission, Washington, D. C.

SAFETY COMMITTEE.

Chairman, H. M. Wolfen, Industrial Accident Commission, San Francisco, Calif.

Vice chairman, John Roach, Bureau of Hygiene and Sanitation, Trenton, N. J.

James L. Gernon, Bureau of Inspection, New York, N. Y.

R. McA. Keown, Safety and Sanitation Department, Madison, Wis.

John A. Walker, Bureau of Inspection, Harrisburg, Pa.

## CONSTITUTION OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS.

ARTICLE I.—This organization shall be known as the International Association of Industrial Accident Boards and Commissions.

### ARTICLE II.—*Objects.*

SECTION 1. This association shall hold meetings once a year, or oftener, for the purpose of bringing together the officials charged with the duty of administering the workmen's compensation laws of the United States and Canada to consider, and, so far as possible, to agree on standardizing (a) ways of cutting down accidents; (b) medical, surgical, and hospital treatment for injured workers; (c) means for the reeducation of injured workmen and their restoration to industry; (d) methods of computing industrial accident and sickness insurance costs; (e) practices in administering compensation laws; (f) extensions and improvements in workmen's compensation legislation; and (g) reports and tabulations of industrial accidents and illnesses.

SEC. 2. The members of this association shall promptly inform the United States Bureau of Labor Statistics and the Department of Labor of Canada of any amendments to their compensation laws, changes in membership of their administrative bodies, and all matters having to do with industrial safety, industrial disabilities, and compensation, so that these changes and occurrences may be noted in the Monthly Review of the United States Bureau of Labor Statistics and the Canadian Labor Gazette.

### ARTICLE III.—*Membership.*

SECTION 1. Membership shall be of two grades—active and associate.

SEC. 2. *Active membership.*—Each State of the United States and each Province of Canada having a workmen's compensation law, the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada shall be entitled to active membership in this association. Only active members shall be entitled to vote through their duly accredited delegates in attendance on meetings.

SEC. 3. *Associate membership.*—Any organization or individual actively interested in any phase of workmen's compensation or social insurance may be admitted to associate membership in this association by vote of the executive committee. Associate members shall be entitled to attend all meetings and participate in discussions, but shall have no vote either on resolutions or for the election of officers in the association.

### ARTICLE IV.—*Representation.*

SECTION 1. Each active member of this association shall have one vote.

SEC. 2. Each active member may send as many delegates to the annual meeting as it may think fit.

**SEC. 3.** Any person in attendance at conferences of this association shall be entitled to the privileges of the floor, subject to such rules as may be adopted by the association.

**ARTICLE V.—Annual dues.**

**SECTION 1.** Each active member shall pay annual dues of \$50, except the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada, which shall be exempt from the payment of annual dues: *Provided*, That the executive committee may, in its discretion, reduce the dues for active membership for those jurisdictions in which no appropriations are made available for such expenditures, making it necessary that the officials administering the law pay the annual dues out of their own pockets for the State.

**SEC. 2.** Associate members shall pay \$10 per annum.

**SEC. 3.** Annual dues are payable any time after July 1, which date shall be the beginning of the fiscal year of the association. Dues must be paid before the annual meeting in order to entitle members to representation and the right to vote in the meeting.

**ARTICLE VI.—Meetings of the association.**

**SECTION 1.** An annual meeting shall be held at a time to be designated by the association or by the executive committee. Special meetings may be called by the executive committee. Notices for special meetings must be sent out at least one month in advance of the date of said meetings.

**SEC. 2.** At all meetings of the association the majority vote cast by the active members present and voting shall govern, except as provided in Article X.

**ARTICLE VII.—Officers.**

**SECTION 1.** Only officials having to do with the administration of a workmen's compensation law or bureau of labor may hold an office in this association, except as hereinafter provided.

**SEC. 2.** The association shall have a president, vice president, and secretary-treasurer.

**SEC. 3.** The president, vice president, and secretary-treasurer shall be elected at the annual meeting of the association and shall assume office at the last session of the annual meeting.

**SEC. 4.** If, for any reason, an officer of this association shall cease to be connected with any agency entitled to active membership, before the expiration of his term, he may continue in office notwithstanding until the next annual meeting, but if for any reason a vacancy occurs in the office of president, the executive committee shall appoint his successor.

**ARTICLE VIII.—Executive committee.**

**SECTION 1.** There shall be an executive committee of the association, which shall consist of the president, vice president, the retiring president, secretary-treasurer, and four other members elected by the association at the annual meeting.

**SEC. 2.** The duties of the executive committee shall be to formulate programs for all annual and other meetings and to make all needed arrangements for such meetings; to pass upon applications for associate membership; to fill all offices which may become vacant; and, in general, to conduct the affairs of the asso-

ciation during the intervals between meetings. The executive committee may also reconsider the decision of the last annual conference, as to the next place of meeting, and may change the place of meeting if it is deemed **expedient**.

ARTICLE IX.—*Quorum*.

SECTION. 1. The president or the vice president, the secretary-treasurer or his representative, and one other member of the executive committee shall constitute a quorum of that committee.

ARTICLE X.—*Amendments*.

This constitution or any clause thereof may be repealed or amended at any regularly called meeting of the association. Notice of any such changes must be read in open meeting on the first day of the conference, and all changes of which notice shall have thus been given shall be referred to a special committee, which shall report thereon at the last business meeting of the conference. No change in the constitution shall be made except by a two-thirds vote of the members present and voting.

RESOLUTIONS REFERRED BY THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS TO ITS EXECUTIVE COMMITTEE WITH INSTRUCTIONS TO ASCERTAIN THE OPINIONS THEREON OF THE OFFICIALS CHARGED WITH THE ADMINISTRATION OF COMPENSATION LAWS.

*Resolved*, That it be the sense of this convention that workmen's compensation laws should contain the following provisions:

1. Full medical, surgical, and hospital treatment, including medicines, nursing, artificial appliances, required to cure and relieve from the effects of the injury.

2. All industries and all employees shall be covered by the compensation act.

3. All injuries, including occupational diseases, arising out of and in the course of employment shall be compensable.

4. Compensation benefits shall inter alia be as follows:

(a) In case of total disability, benefits shall be paid during disability.

(b) In case of death, benefits shall be paid until death or remarriage of widow and until children reach the age of 18 years.

(c) Weekly maximum and weekly minimum should be increased.

(d) All limitations as to total amount of compensation shall be eliminated.

(e) If compensation benefits are based upon wages, the percentage shall not be less than 66½ per cent.

5. The waiting period shall not be more than three days, and if the disability continues for more than two weeks compensation shall be paid from the date of disability.

6. The administration of every compensation law shall be under an industrial accident commission or board.

The executive committee also desires the opinions of officials having to do with the administration of compensation laws as to what is the best system for carrying workmen's compensation insurance—namely:

1. Private-stock casualty companies.

2. Mutual associations.

3. "Self-insurance."

4. A competitive State fund in conjunction with any or all of the above-named systems.

5. An exclusive State fund, the administrative expenses of which are paid out of appropriations made by the legislature.

6. An exclusive State fund under which all expenses are provided by the rates assessed upon employers, as in New Brunswick, Canada.

## APPENDIX.

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### LIST OF PERSONS WHO ATTENDED THE SIXTH ANNUAL CONVENTION OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, HELD AT TORONTO, CANADA, SEPTEMBER 23-26, 1919.

[\*Official representative.]

#### CANADA.

##### *Alberta.*

\*J. T. Stirling, chairman, Workmen's Compensation Board.

##### *British Columbia.*

\*E. S. H. Winn, chairman, Workmen's Compensation Board.

##### *Manitoba.*

\*H. G. Wilson, chairman, Workmen's Compensation Board.

\*Nicholas Fletcher, secretary, Workmen's Compensation Board.

E. McGrath, secretary, Bureau of Labor.

##### *New Brunswick.*

\*John A. Sinclair, chairman, Workmen's Compensation Board.

##### *Nova Scotia.*

\*F. W. Armstrong, vice chairman, Workmen's Compensation Board.

\*Dr. M. B. Morrison, medical officer, Workmen's Compensation Board.

##### *Ontario.*

\*S. Price, chairman, Workmen's Compensation Board.

\*Geo. A. Kingston, commissioner, Workmen's Compensation Board.

\*N. B. Wormith, secretary, Workmen's Compensation Board.

\*R. W. Dance, assistant secretary, Workmen's Compensation Board.

\*W. E. Struthers, chief medical officer, Workmen's Compensation Board.

\*D. E. Bell, medical officer, Workmen's Compensation Board.

\*L. M. Miller, medical aid officer, Workmen's Compensation Board.

\*T. Norman Dean, statistician, Workmen's Compensation Board.

\*W. B. Cross, assistant statistician, Workmen's Compensation Board.

\*A. J. Walker, auditor, Workmen's Compensation Board.

\*E. E. Starr, auditor, Workmen's Compensation Board.

\*W. N. Hancock, claims officer, Workmen's Compensation Board.

\*H. R. Polson, pay roll officer, Workmen's Compensation Board.

\*John Scott, assessment clerk, Workmen's Compensation Board.

- \*Harold Pryce, cashier, Workmen's Compensation Board.  
 James Mavor, professor political economy, University of Toronto.  
 W. E. Segsworth, director of training, Soldiers' Civil Reestablishment Department.
- R. B. Morley, general manager, Ontario Safety League.  
 J. F. Wyse, Ontario Safety League.  
 Wills MacLachlan, Electrical Employers Safety Association.  
 A. P. Costigane, Ontario Pulp and Paper Makers' Safety Association.  
 James T. Burke, chief factory inspector, Toronto.  
 R. L. McIntyre, Canadian Manufacturers' Association.  
 Sam. Harris, Canadian Manufacturers' Association.  
 H. Elgie, president, Provincial Contractors of Ontario.  
 W. E. Dillon, Builders' Exchange.  
 F. J. Lightbourn, Toronto, representing Maryland Casualty Co.  
 W. A. McKague, editor, Monetary Times.  
 J. S. Cunningham, tentative association with Industrial Hygiene Section of Public Health Department, University of Toronto.  
 J. W. Anderson, superintendent, Canada Steel & Wire Co., Hamilton.  
 F. W. Marlow, M. D., president, Ontario Medical Association, Toronto.  
 E. S. Scarlett, M. D., works surgeon, International Harvester Co., Hamilton.  
 J. M. Bostock, chemist, Factory Inspection Branch, Trades and Labor.  
 W. L. T. Addison, M. D., surgeon to Wm. Davies Co., Toronto.  
 G. Mooney, M. D., Toronto.  
 Bryce M. Stewart, director of employment service, Department of Labor, Ottawa.  
 A. W. Holmes, factory inspector, Trades and Labor Branch, Toronto.

#### UNITED STATES.

##### *California.*

- \*Will J. French, member, Industrial Accident Commission.

##### *Connecticut.*

- \*Geo. E. Beers, member, Workmen's Compensation Commission.  
 \*G. B. Chandler, member, Workmen's Compensation Commission.  
 \*James J. Donahue, M. D., member, Workmen's Compensation Commission.  
 Harold N. Clark, M. D., physician in chief, Crane Co., Bridgeport.  
 Geo. E. Tucker, M. D., Ætna Life Insurance Co., Hartford.

##### *Delaware.*

- \*Sylvester D. Townsend, president, Industrial Accident Board.  
 \*Volley M. Murray, member, Industrial Accident Board.  
 \*Chas. H. Grantland, secretary, Industrial Accident Board.

##### *Idaho.*

- \*Frank J. Clayton, member, Industrial Accident Board.

##### *Illinois.*

- \*C. S. Andrus, chairman, Industrial Commission.  
 W. H. Doolittle, superintendent, Department of Classification and Safety, National Metal Trades Association, Chicago.

J. F. Lewis, M. D., Mineral Point Zinc Co., Depue.  
 W. J. Scott, assistant secretary-treasurer, Mineral Point Zinc Co., Chicago.

*Indiana.*

Dr. A. F. Knoefel, consulting physician, United States Bureau of Mines, Terre Haute. ,  
 Harold Henderson, attorney for the mine workers, Terre Haute.  
 J. F. Lynch, attorney, Coal Operators' Reciprocal Association, Terre Haute.

*Iowa.*

\*A. B. Funk, industrial commissioner, Workmen's Compensation Service.  
 \*P. A. Bendixen, M. D., United States Employees' Compensation Commission, Davenport.

*Kansas.*

\*J. H. Crawford, Commissioner of Labor and Industry.

*Maryland.*

\*Charles D. Wagaman, chairman, State Industrial Accident Commission.  
 \*R. E. Lee, member, State Industrial Accident Commission.  
 \*Worthington P. Wachter, secretary, State Industrial Accident Commission.  
 \*J. L. Harshman, chief claims officer, State Industrial Accident Commission.  
 T. N. Bartlett, superintendent, Workmen's Compensation, Maryland Casualty Co., Baltimore.

*Massachusetts.*

\*W. W. Kennard, chairman, Industrial Accident Board.  
 \*F. D. Donoghue, medical adviser, Industrial Accident Board.  
 F. E. Schubmehl, M. D., works physician, General Electric Co., Lynn.

*Michigan.*

\*Ora B. Reaves, deputy commissioner, Industrial Accident Board.  
 \*Fred A. Zierleyn, member, Industrial Accident Board.  
 Archibald W. George, M. D., chief surgeon, Packard Motor Car Co., Detroit.

*Minnesota.*

\*John P. Gardner, commissioner, Department of Labor and Industry.  
 \*Oscar M. Sullivan, chief statistician, Department of Labor and Industry.

*Missouri.*

Adrian F. Sherman, Sherman & Ellix Service, Kansas City.

*New York.*

\*James M. Lynch, member, Industrial Commission.  
 \*Dr. Raphael Lewy, medical examiner, Industrial Commission.  
 John M. Bessey, general manager, National Association of Mutual Insurance Companies, New York City.

F. W. Keough, National Association of Manufacturers, New York City.  
 John L. Hughes, claim superintendent, Utica Mutual Insurance Co., Utica.  
 F. S. Knight, counsel and manager, The Weekly Underwriter, New York City.  
 G. F. Michelbacher, actuary, National Workmen's Compensation Service  
 Bureau, New York City.

*Ohio.*

\*T. J. Duffy, chairman, Industrial Commission.  
 \*E. E. Watson, chief actuary, Industrial Commission.  
 \*Robert S. Hayes, secretary, Industrial Commission.  
 \*H. L. Eliot, member, Industrial Commission.  
 D. L. Cease, editor, the Railroad Trainman, Cleveland.  
 Dr. Herbert L. Davis, industrial physician and surgeon, Cleveland.

*Oklahoma.*

\*W. C. Jackson, member, Industrial Commission.

*Oregon.*

\*William A. Marshall, chairman, Industrial Accident Board.  
 \*Dr. F. H. Thompson, medical adviser, Industrial Accident Board.

*Pennsylvania.*

\*R. M. Pennock, actuary, Bureau of Workmen's Compensation.  
 Martin E. Griffith, Pittsburgh Steel Co., Monessen.  
 \*F. H. Bohlen, legal adviser, Bureau of Workmen's Compensation.

*South Dakota.*

Dr. F. E. Clough, chief surgeon, Homestake Mining Co., Lead.

*Tennessee.*

\*Louis J. Allen, chief inspector, State Department of Workshop and Factory  
 Inspection, Nashville.

*Vermont.*

\*J. S. Buttles, commissioner of industry, Montpelier.

*Virginia.*

\*C. A. McHugh, commissioner, Industrial Commission, Richmond.

*Washington, D. C.*

\*Dr. Royal Meeker, commissioner, United States Bureau of Labor Statistics.  
 \*Carl Hookstadt, expert, United States Bureau of Labor Statistics.  
 \*Mrs. Frances C. Axtell, chairman, United States Employees' Compensation  
 Commission.  
 \*C. H. Verrill, member, United States Employees' Compensation Commission.  
 \*R. J. Hoage, statistician, United States Employees' Compensation Commis-  
 sion.  
 \*Dr. J. W. Trask, chief medical director, United States Employees' Compensa-  
 tion Commission.  
 Charles E. Oakes, associate electrical engineer, United States Bureau of  
 Standards.  
 \*Lindley D. Clark, United States Bureau of Labor Statistics.

*Washington State.*

- \*W. P. Brown, commissioner, Industrial Department.
- \*Dr. J. W. Mowell, chief medical officer, Industrial Insurance Department.
- \*John S. Kloeber, M. D., chairman, State Safety Board; member, Medical Aid Board.

*West Virginia.*

- \*Lee Ott, commissioner, State Compensation Commission.

*Wisconsin.*

- \* F. M. Wilcox, member, Industrial Commission of Wisconsin.

