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BULLETIN

OF THE

BUREAU OF LABOR.

No. 74. WASHINGTON. JANUARY, 1908.

THE LEGAL LIABILITY OF EMPLOYERS FOR INJURIES TO THEIR EMPLOYEES, IN THE UNITED STATES.

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Although the English common law lies at the foundation of our doctrine of employers' liability, this doctrine is continually undergoing change, both by the rulings of State and National courts and by the enactment of numerous statutes passed with a view to a more exact definition of the rights of the employee or to some amelioration of his condition in other respects. The principles of the common law are so differently interpreted in the various jurisdictions that State names are given to certain applications of them, indicative of a locally recognized view which is not in accord with the generally accepted construction of the law; while the statutes range in form and effect from a mere restatement of the common law to an abrogation of it in some more or less inclusive degree and the enactment of rules varying considerably both from it and from one another.

The great volume of litigation on the subject has not effected results of a conclusive character, mainly, perhaps, because of the fact that it is largely an effort to determine the boundaries between the risks assumed under the law by an injured employee and the unlawful negligence of the employer in causing or permitting dangerous conditions to exist. The definitions of these factors often have not been accurately drawn, nor have those formed been so generally accepted as to secure uniformity. Again the view formerly prevalent favored the entire assumption of the risk by the employee, while the gradual growth of the doctrine of the duty of his protection by the employer has given rise to a variety of decisions and statutory enactments, with

the result that we now have in the United States a body of law and practice that is in effect largely of the nature of a compromise. It is the purpose of the present undertaking to set forth with some completeness the more important principles of the common law as generally applied to this subject in this country, together with such local variations as may appear; also to reproduce the statutory provisions of those States which have passed enactments on the subject, presenting the construction put thereon where they have been reviewed by the superior State courts or the Federal courts.

COMMON LAW LIABILITY.

The doctrine of the employer's liability under the common law is presented under the heads of the duties and the defenses of the employer.

THE DUTIES OF EMPLOYERS.

As already stated, the two principal factors of the problem are the uty of the employer to protect his employee in the discharge of the uties of his employment and the assumption by the employee of the isks involved in the undertaking in which his contract of employ- ient engages him. The duty of the employer is first considered, ut it will be found impossible to discuss it without constantly earing in mind the modifications that result from the existence of ie complementary obligations resting on the employee.

The briefest statement of the rule governing the employer is that e is required to use due care for the safety of his employees while iey are engaged in the performance of their work. This is taken to include all reasonable means and precautions, the facts in each particular case being taken into consideration. If such provisions have been made as a reasonably prudent man would supply if he himself were exposed to the dangers of the servant's position, no negligence would appear. In the case of corporations the Supreme Court fixes the duty at the use of such caution and foresight as a corporation controlled by careful, prudent officers ought to exercise.(a)

Though the courts of review have condemned any instructions that would tend to charge the employer with a higher degree of care than that which may be defined as ordinary, the measure is not an absolute one, but is proportioned to the dangers to which the employee is exposed. The ordinary incidents of railroading, mining, and certain classes of manufacturing are in themselves, in comparison with general employments, unusually dangerous; and so of a large railroad yard as compared with a smaller one, an express train as compared with a freight train, or a gaseous mine with one in which no

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a Wabash R. Co. *v.* McDaniels (1882), 107 U. S. 454, 2 Sup. Ct. 932.

such dangers exist. In such cases as these, or when temporarily abnormal conditions prevail, ordinary care is advanced far beyond the requirements of the less dangerous conditions. On the other hand, care may lawfully be relaxed if the risk is unusually slight or if a device is for a specific and transitory use. The general rule as to care is qualified by the youthfulness or inexperience of an employee, a greater degree of care being commonly required for the protection of such persons; nor is the master relieved by the fact that a servant of tender years misrepresented his age in order to secure the employment.[a]

PLACE AND INSTRUMENTALITIES.

Tools and appliances.

In accordance with the rule as to due care, the obligation rests on the master to supply tools and appliances that are reasonably safe for the intended use and reasonably well adapted to perform the work in contemplation. These must be provided at the place of use or at a place of such ease of access as to be reasonably procurable.

Place and materials.

Closely related is the duty to provide a safe place to work and proper material for use, the measure still being not absolute but reasonable or adequate safety. The distinction between place and appliance is not an easy one to draw, though the courts are stricter in their requirements as to the former than to the latter. Thus, if a scaffold furnished by an employer be regarded as a place to work, he is responsible not only for the materials supplied, but also for the construction and maintenance; while if it be viewed only as an appliance, he must make reasonable provision therefor, but its insufficiency, if such there be, may be laid to the account of the fellow-workmen of an injured employee, or perhaps to his own negligence in erection.[b]

New devices.

What may be required in the way of improvement and alteration or in the adoption of new devices to accomplish the ends of safety is governed largely by the usual and ordinary course of procedure of those in the same business. The employer can not be made an insurer, nor is he bound to introduce the newest and safest appliances. On the other hand, he can not be allowed to disregard all inventions for securing the safety and comfort of his workmen. But as new

[a] Am. Car & Foundry Co. *v.* Armentraut (1905), 214 Ill. 509, 73 N. E. 766.

[b] Butler *v.* Townsend (1891), 126 N. Y. 105, 26 N. E. 1017; Hoveland *v.* National Blower Works (1908), 114 N. W. 795. (Wis.)

devices become more generally used, the standard of the custom of prudent men will become correspondingly altered, and the law of general usage may compel the adoption of devices the omission of which had not previously been considered as negligence.(a) This rule operates more effectively in the case of installing new equipments or of beginning a new undertaking than where the question is one of the continuance or modification of established conditions.

The doctrine that the employer is bound to safeguard his employees from exposure to needless and unreasonable risks is subject to the general qualification that one has the right to carry on a business which is dangerous, either in itself or because of the manner in which it is conducted, provided it does not interfere with the rights of others, without incurring liability to a servant who is capable of contracting and who knows the dangers attendant on employment in the circumstances.(b) A brief statement of the rule is that the employer has a right to exercise a reasonable judgment and discretion in the conduct of his affairs, and it is said that it would be a very extraordinary case indeed in which this right would be interfered with.(b) This does not, however, permit the use of unreasonably dangerous appliances nor those which are in themselves defective or so obsolete and inferior that their adoption or retention would of itself indicate negligence,(c) though the question is held to be one not of comparative safety but of reasonable safety. No fixed rule of liability is possible, therefore, in this respect, each case being of necessity decided on its own merits.

Where a convenience is of great advantage, its adoption may be classed as obligatory, at least where the change involves but small cost. It is not clear how far expense may be offered as a defense, no case being at hand in which that alone was held to relieve the employer from the duty of correcting abnormally dangerous conditions. In Alabama, however, the cost and the effect on public interests were considered as so affecting the requirement that the employer was not held negligent as matter of law in a case where a low bridge over a railroad could be changed only at large expense and the marked inconvenience of several members of the public.(d)

Repair.

The same care is required of the master in maintaining as in furnishing safe and suitable appliances.(e) Inasmuch, however, as the progress of work and the use of tools produce constantly changing

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[a] Mason *v.* Richmond & D. R. Co. (1892), 111 N. C. 482, 16 S. E. 698.

[b] Tuttle *v.* Detroit, etc., Ry. (1887), 122 U. S. 189, 7 Sup. Ct. 1166.

[c] Choctaw, O. & G. R. Co. *v.* McDade (1903), 191 U. S. 64, 24 Sup. Ct. 24.

[d] Louisville & N. R. R. Co. *v.* Hall (1890), 91 Ala. 112, 8 So. 371.

[e] Moore *v.* Wabash, St. L. & P. R. Co. (1885), 85 Mo. 588.

conditions, the doctrine that reasonably safe places and appliances must be provided is frequently modified by the statement that the duty has been discharged when ordinary or reasonable care has been exercised in the effort to make such provision.(a) The continued employment of tools that are so worn as to increase the danger of their use will in general entail liability on the employer. If, however, the danger is an obvious one, the employee, continuing to work with a knowledge of the danger and without complaint, will be considered to have assumed the risk, and in case of injury has no recovery; nor will liability attach until the employer has or reasonably could have information of the defect requiring repair.

Here, again, qualifications abound, the usage of the trade, the custom of the shop, and the nature of the instrumentality each being a factor. Simple repairs may customarily be made by the users of the tools, in which case the employer is without liability. If a machinist is employed to make repairs, a workman injured while attempting to repair his own machine is without right of action. Perishable appliances, such as ropes, belts, etc., which wear out constantly from use, should be renewed at proper intervals if the master is to stand clear of the charge of negligence.

Intended use.

Liability attaches only where the injury is the result of the use of an appliance for the work and in the manner for which it was furnished. Thus the common practice of workmen riding on elevators intended only for freight is at the risk of the workman; (b) so, also, of the use of one ladder for splicing to another when it was intended solely for use alone.(c) Continued indulgence in a practice with the master's acquiescence, however, or the adaptation of an appliance to new uses by the master himself or by a representative, qualifies this rule, so that if such use involves increased danger and a servant is injured thereby the master can not defend by pointing out the deviation from the original use or showing that the instrumentality was suitable therefor.(d)

Customary method.

In close connection with the above is the rule that the employer is not liable to an employee for an injury incurred by a departure from the customary method of performing work or by leaving the place of his employment to work in some other department unless on instruc-

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[a] Anderson *v.* Michigan C. R. Co. (1895), 107 Mich. 591, 65 N. W. 585; Reed *v.* Stockmyer (1896), 20 C. C. A. 381, 74 Fed. 186.

[b] Kern *v.* De Castro & D. Sugar Ref. Co. (1890), 125 N. Y. 50, 25 N. E. 1071.

[c] McKay *v.* Hand (1897), 168 Mass. 270, 47 N. E. 104.

[d] Lauter *v.* Duckworth (1897), 19 Ind. App. 535, 48 N. E. 864.

tions from a properly authorized representative.(a) So if a more dangerous method or place of work is chosen when one less dangerous was available, the resultant injury, if any, does not charge the employer with liability.(b)

Incomplete, etc., appliances.

A lower standard of the employer's liability prevails where the employee is engaged in the work of repair, or of bringing an unfinished appliance to completion, or of the demolition of a structure. A greater degree of danger is obviously present under such conditions than if the work was proceeding with complete and stable instrumentalities, and the employee is held to be correspondingly obligated to be on his guard, though it is by no means intended to relieve the employer by a general rule. The actual knowledge of the employee may be taken as the ultimate guide in determining liability, and unnecessary and abnormal dangers are not a part of the risk assumed.(c)

Inspection.

The duty of making repairs necessarily involves the duty of discovering the need for them as it may arise, which entails the duty of inspection. The duty of maintaining tools and machinery in a reasonably safe and suitable condition is in general on a level with the duty to provide such appliances in the first instance. The inspection required for such maintenance differs somewhat from that necessary or presumed at the time a new plant or new tools are first brought into use. As to the latter it may first be stated that an employer who makes and supplies an instrumentality is chargeable with such a knowledge of its defects as ordinary care during the course of such manufacture would have disclosed. Subsequent inspections will not relieve him of this liability so long as the defects continue, and notice of such original defects is not necessary in order to fix the responsibility of the employer. In case of purchase, the duty of inspection may ordinarily be assumed to have been discharged by the manufacturer, though a showing that the purchase was carelessly made (as, for instance, without indicating to the manufacturer the intended use, so that he might make tests appropriate to such use) has been held to imply negligence. If an article is of an approved pattern and the dealer is a reputable one, the presumption is in favor of the employer's nonliability. Indeed, it is generally considered

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[a] Stagg *v.* Edward Western Tea & Spice Co. (1902), 169 Mo. 489, 69 S. W. 391.

[b] Wormell *v.* Maine C. R. Co. (1887), 79 Me. 397, 10 Atl. 49.

[c] Colorado Midland R. Co. *v.* Naylon (1892), 17 Colo. 501, 30 Pac. 249; but see Brick *v.* Rochester, N. Y. & P. R. Co. (1885), 98 N. Y. 211.

that such facts are conclusive in his favor in the absence of particular facts or circumstances calculated to put a prudent person on his guard.(a) This doctrine does not appear to control in Michigan, however, where it has been held to be the duty of the employer to cause thorough inspection of newly purchased articles before putting them into use.(b) The duty of a reasonable inspection of purchased appliances is also inferable from a comparatively recent opinion of the Supreme Court of the United States.(c) In favor of this view is the fact that it accords with the doctrine of nondelegable duties, discussed below, and that it alone affords protection to the employee where there has been actual negligence on the part of the manufacturer, with whom he has no contractual relations.

The necessity for inspection of instrumentalities in use obviously varies with the nature of the appliance and the circumstances of employment. Small and simple tools may be used without inspection, the employer being entitled to assume that the workmen will make timely discovery of defects and be suitable judges of the fitness of such tools for use. Complex or dangerous machinery or instrumentalities that are liable to rapid wear or deterioration must, on the other hand, be the subjects of inspections of a nature and frequency adapted to the conditions indicated. Inasmuch, however, as inspection is only a means to an end, the fact that due provision has been made therefor will not absolve a master from liability where he has actual knowledge of defective conditions through some other means than by inspection. Nor will the proved inadequacy of an inspecting force charge him with liability if it is shown that in any particular instance the appliance involved in the case was in fact properly inspected.

The duty does not extend beyond a reasonably careful inspection, though no defect will be considered latent which may be discovered by the exercise of due care. The taking apart of machinery, or such other inspection as would interfere with the profitable conduct of business, is not, in general, required.(d) External appearances, however, may be such as to demand a more thorough inspection; (e) so, also, of appliances showing defects in operation or those to which some accident has occurred of a nature likely to cause obscure injuries, etc.(f)

As to frequency of inspections there is little that can be stated definitely. The nature of the appliance and its liability to change

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[a] Reynolds *v.* Merchants' Woolen Co. (1897), 168 Mass. 501, 47 N. E. 406. But see Erickson *v.* Am. Steel & W. Co. (1906), 193 Mass. 119, 78 N. E. 761.

[b] Morton *v.* Detroit, etc., R. Co. (1890), 81 Mich. 423, 46 N. W. 111.

[c] Richmond & D. R. Co. *v.* Elliott (1893), 149 U. S. 266, 13 Sup. Ct. 837.

[d] Philadelphia & R. R. Co. *v.* Hughes (1888), 119 Pa. 301, 13 Atl. 286.

[e] Hall *v.* Emerson-Stevens Mfg. Co. (1900), 94 Me. 445, 47 Atl. 924.

[f] Mooney *v.* Connecticut River Lumber Co. (1891), 154 Mass. 407, 28 N. E. 352.

under the conditions of use are elements to be reckoned with. Appliances which are much worn or which are not maintained at a good standard of condition according to common usage require more frequent inspection than is obligatory with newer and more efficient equipment and methods.

The modification of the doctrine of safe places in case of unfinished structures and of repairs following accidents applies to the duty of inspection, the probability of defective conditions being a matter of common knowledge, so that the servant making the inspection will be supposed to have assumed the risk.

Ownership of appliances.

The duty of inspection above considered assumes the ownership of both appliances and premises to be in the employer. Where ownership is divided various distinctions exist, based on the relations of the employer and the owner of the premises or instrumentality. The most important of this class of cases are perhaps those in which is involved the handling by railroad companies of cars belonging to other companies. Such cars, known in railroading as "foreign" cars, although received only temporarily for purposes of transportation, are as completely identified with the employer's plant as if the transfer was made by purchase, so that the nature of the obligations arising therefrom differs from that existing in cases where the employer's lack of control over the appliance is usually held to exempt him from liability.(a)

In the first place, it may be said that no railway company is obliged to receive and turn over to be handled by its employees any defective or dangerous car. Every company is under a legal duty not to expose its employees to dangers arising from such defects of foreign cars as may be discovered by reasonable inspection before such cars are received into its train. This inspection is such a one as the company's own cars would receive while in use, and not a shop inspection. The shortness of the time during which the foreign car is in the hands of a company is not an excuse for neglecting the duty.(b)

Where danger from the use of foreign cars arises, not from defective equipments, but from differences of construction, it has been generally held that the servant assumes the obvious risks thus arising, but if ignorance of the risk is predicated on his part his right of action would follow. It may be noted, however, that the statutory requirement of automatic couplers is not met unless the various

[a] Baltimore & P. R. Co. *v.* Mackey (1895), 157 U. S. 72, 15 Sup. Ct. 491.

[b] Atchison, T. & S. F. R. Co. *v.* Penfold (1896), 57 Kans. 148, 45 Pac. 574.

kinds brought together will actually couple by impact, the mere fact that they will so couple when used with others of the same make not being a sufficient compliance with the Federal statute.(a)

Animals.

Where animals are used as a part of an employer's industrial appliances, or are kept on his premises, and an employee is injured by reason of their vicious or otherwise dangerous qualities, the employer is liable for the injury if he is or ought to be aware of such dangerous qualities. The same general rules as to the employer's duty to give warning and the employee's assumption of risk in accordance with his own knowledge of conditions are applicable in this connection as in the case of inanimate appliances or adjuncts.

WORKING FORCE.

Hiring coservants.

Besides the duty to use care in regard to inanimate or irresponsible instrumentalities, the employer must also be reasonably and properly careful and diligent to see that each employee hired by him has such qualifications as will enable him to perform his duties without greater risk to himself and his coemployees than the business necessarily involves. The same principles apply here as in connection with the duty as to appliances. Where the degree of danger to be guarded against is greater or the skill needed for safety is of a higher order, the degree of care demanded is correspondingly increased. Obviously the question of experience or ability would be of little moment in mere manual labor unrelated or not immediately related to other stages of work, while for certain classes of railroad employment, for instance, definite inquiries as to qualifications are necessary to relieve the employer of the charge of negligence.

The disqualifications of persons of suitable age may be mental, moral, or physical, the most common being those that arise from the intemperate use of intoxicants, though habitual carelessness or recklessness, such as may reasonably come to the knowledge of the employer, likewise charge him with liability. The element of knowledge, either actual or constructive, is an essential one. A plaintiff grounding his claim on the negligence of the employer in hiring an incompetent coservant must prove, not only the incompetence, but also that the employer failed of proper care and diligence in the original hiring or in subsequent inquiry as to incompetency of which notice was given during the term of service.(b) It must further

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[a] Johnson *v.* S. P. R. Co. (1904), 196 U. S. 1, 25 Sup. Ct. 158.

[b] Indiana, B. & W. R. Co. *v.* Dailey (1887), 110 Ind. 75, 10 N. E. 631.

appear that the injuries complained of were the consequence of the incompetence charged.[a]

Although the employer's duty in regard to care is a continuing one, the presumption of good character and suitable qualifications can safely be relied on by an employer who has used due care in the original hiring until notice of a change. A single act of negligence or incompetence is not enough to fix the employer's liability for continuing to employ the servant guilty of the same, though notice thereof may be presumed to put him on his guard. It has been held in some cases, however, that the quality of a single act was so notoriously objectionable that it indicated a degree of incompetence sufficient to charge the master with liability for the employment of the person committing it.[b] Evidence of the commission of several acts of negligence is, in most jurisdictions, held to be competent to prove the unfitness of a servant. In Pennsylvania [c] and Massachusetts, [d] however, general reputation is made the test, and the submission of individual acts is objected to as tending to raise collateral inquiries, and thus indefinitely to protract the case; but the rule that proof of frequent specific acts of actual negligent quality of which the employer had, or by the use of due care could have had, knowledge is the one generally approved; and obviously reputation is the general result of the impressions made by individual occurrences.

Corollary to the obligation to employ competent coservants is the requirement that a sufficient number shall be provided for the reasonably safe performance of the employer's work. This duty includes that of seeing, at least in a general way, that the employees engaged are properly distributed to the various parts of the establishment and that due provision for physical fitness is made by allowing opportunity for rest and time for meals.

Rules.

Another branch of the employer's duty is that of providing appropriate rules and securing the carrying out of a suitable system for the conduct of his work. This applies only to businesses sufficiently complex to make such arrangements reasonable, and no such assumption

[a] Galveston Rope & Twine Co. *v.* Burkett (1893), 2 Tex. Civ. App. 308, 21 S. W. 958.

[b] Baulec *v.* New York & H. R. Co. (1874), 59 N. Y. 356, 17 Am. Rep. 325.

[c] Frazier *v.* Pennsylvania R. Co. (1861), 38 Pa. 104, 80 Am. Dec. 467. This case was sharply criticised in Pittsburg, Ft. W. & C. R. Co. *v.* Ruby (1871), 38 Ind. 294, 10 Am. Rep. 111, in which it was said that "the case stands alone, unsustained and unsupported, so far as we have been able to discover, by any elementary work or decision."

[d] Hatt *v.* Nay (1887), 144 Mass. 186, 10 N. E. 807.

is made as that rules can be so framed as to guard against every contingency. The duty is held to extend to the making of reasonable rules and their reasonable and practicable enforcement, ordinary care being used to anticipate and guard against such accidents as can be reasonably foreseen. A defective system and inadequate rules will not satisfy the law, but the presumption is in favor of the sufficiency of those provided, and it has been held that only manifestly unreasonable or clearly insufficient rules would leave the employer open to the charge of negligence.(a) In this, as in other cases, common usage is in general accepted as conclusive. The absence of rules may be condoned if it appears that a customary method of carrying on work is actually sanctioned and approved by the employer and is understood by the employees as being binding upon them. A mere custom of employees, however, apart from the employer's approval or enforcement will not suffice.(b)

Such rules and practices as are prescribed must be brought to the knowledge of the employee before he is considered to be bound by them, but it may be inferred from circumstances that this has been done. Express contracts with reference to the conditions of employment as affected by specified rules are conclusive as against an employee professing ignorance of such rules;(c) but a mere agreement, though in writing, to study the rules and keep posted on them is applicable only to such rules as have been duly promulgated or which the employer has definitely undertaken to bring to the employee's knowledge.(d) Continuance in service for a considerable length of time or the fact that printed copies of rules are furnished with directions that they be read are circumstances that will be construed against the employee in cases of claims based on alleged ignorance of rules.

Enforcement of rules is no less a duty than the promulgation of rules in so far as a reasonably careful supervision will accomplish it. Repeated and notorious violations will charge the employer with a knowledge of the insufficiency of the provisions made and the necessity of new regulations or of additional superintendence. In the absence of steps to secure the enforcement of rules thus violated it has been frequently held that the master has sanctioned their abrogation and that they are no longer binding. Their violation would not then be regarded as negligence, nor could the employer offer such rules as a defense.(e)

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[a] Little Rock & M. R. Co. *v.* Barry (1898), 28 C. C. A. 644, 84 Fed. 944.

[b] Abel *v.* Delaware & H. Canal Co. (1886), 103 N. Y. 581, 9 N. E. 325.

[c] Sedgwick *v.* Illinois C. R. Co. (1887), 73 Iowa 158, 34 N. W. 790.

[d] Carroll *v.* East Tennessee, V. & G. R. Co. (1889), 82 Ga. 452, 10 S. E. 163.

[e] St. Louis, A. & T. R. Co. *v.* Triplett (1891), 54 Ark. 289, 15 S. W. 831; 16 S. W. 266.

Instructions and warnings.

Besides the general rules by which the conduct of business is determined, instructions may be necessary either in case of abnormal conditions or of the employment of inexperienced persons. The principle lying at the foundation of this duty is the same as in the case of providing appliances, viz, liability does not attach on account of the dangers of the situation, but for placing the employee in a situation of the hazards of which he is excusably ignorant. There is no legal necessity for the giving of instructions or warnings, therefore, where the employee's knowledge as to conditions and means of safety is equal to that of the employer, nor where, all the circumstances being considered, adequate knowledge can be attributed to him. On principles already adverted to, repair men, or those whose duty it is to make dangerous places safe, are not entitled to instruction so far as the dangers involved relate only to the appliances or places which engage their attention. A modification of this rule is to be found, however, in the fact that it is not a mere knowledge of conditions, but a comprehension of the dangers attendant thereon that must be shown in order to absolve the master from responsibility.(a) Misrepresentations on the part of the employee as to age and experience have been held by some courts to relieve the master of the duty to instruct,(b) while others deny such effect.(c) Regarding the duty as one of "proper care," it would seem that the employer can not be absolved from the duty of disclosing dangers which are not obvious, by any statements whatever of those whom he may employ, though the circumstance of the employee's representations may be considered.

Inasmuch as persons of tender years are particularly unlikely to understand the risks attendant upon the use of dangerous machinery, the duty of instruction will be held to apply in cases of their employment when it would not be considered if the conditions related to adult employees. Experience and capacity are to be reckoned with in deciding as to the duty of instructing minors as well as adults, but where a person is too young to realize the dangers or to profit by the instructions given the employer is not freed from liability even by the giving of such instructions as would under ordinary conditions be sufficient.(d)

Not every contingency is to be anticipated in the giving of instructions, but such only as are probable in the conduct of the business

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[a] Coombs *v.* New Bedford Cordage Co. (1869), 102 Mass. 572, 3 Am. Rep. 506.

[b] Steen *v.* St. Paul & D. R. Co. (1887), 37 Minn. 310, 34 N. W. 113.

[c] Louisville & N. R. Co. *v.* Miller (1900), 43 C. C. A. 436, 104 Fed. 124.

[d] Hickey *v.* Taafe (1887), 105 N. Y. 26, 12 N. E. 286; Pittsburg, C. & St. L. R. Co. *v.* Adams (1886), 105 Ind. 151, 5 N. E. 187.

and while the servant keeps within the scope of his employment. Increased hazards of which the employer has or should have knowledge should be brought to the attention of even experienced workmen who are not in a situation to acquire timely knowledge for themselves. The instructions must be sufficiently definite and explicit to call attention to the specific dangers, and must be timely and adequately imparted to the person for whose benefit they are intended. What will amount to a sufficiency can not be determined by any set rule, but will vary with conditions. It has been held in a number of instances that a mere notice to be on one's guard is not sufficient, but that the particular danger and a probably safe way of avoiding it should be pointed out.[a] It is obvious, however, that conditions may make the enforcement of this rule unnecessary or even impracticable, for the danger may be discoverable or avoidable by proper circumspection, or it may be of such nature that only the persons actually present can determine at the time how it may best be avoided.

A railroad employee rightfully on the track may expect warning of the approach of a train;[b] also the crew of a freight train is entitled to warning if likely to meet unusal obstructions in a yard at night.[c] Under the doctrine of the "last clear chance" this duty to warn is held to be such that, notwithstanding the previous negligence of the injured person, if, at the time the injury occurred, it might have been avoided by the exercise of reasonable care on the part of the defendant, he will be liable for the failure to exercise such care;[d] while in a recent case in Missouri[e] it was held that under the theory of the "humanitarian doctrine" of the employer's liability an employee, even if negligent, can recover where it was practicable for persons in charge of a train to avoid inflicting the injury on account of which the action is brought.

RESTRICTIONS OF EMPLOYEES' RIGHT TO RECOVER.

Efforts on the part of the employer to make his workmen insurers of their own safety by the adoption of rules or the requirement of contracts releasing the employer from liability will in general be discountenanced by the courts. Thus it has been held that a rule which required an employee not to attempt to use appliances unless he knew that they were in a proper condition imposed upon the servant one of the duties of the master, i. e., that of seeing that the implements furnished are in a reasonably safe state of repair, and such rule was de-

[a] Fox *v.* Peninsular White Lead & Color Works (1891), 84 Mich. 676, 48 N. W. 203.

[b] Illinois C. R. Co. *v.* Mahan (1896), 34 S. W. 16. (Ky.)

[c] McGraw *v.* Texas & P. R. Co. (1898), 50 La. Ann. 466, 23 So. 461.

[d] Styles *v.* Receivers of Richmond & Danville R. Co. (1896), 118 N. C. 1084, 24 S. E. 740.

[e] Johnson *v.* St. Joseph Terminal Co. (1907), 101 S. W. 641.

cleared void.(a) A stipulation exempting a railroad company from liability for injuries caused employees by its negligence is void as against public policy.(b) A contract executed subsequent to the employee's entrance on service, relieving the employer of liability, is void for want of consideration.(c) In another case a lower court of the same State held a contract of like effect, though based on sufficient consideration, to be void as against public policy.(d)

It has been held that an employer could not relieve himself by contract of a liability imposed by statute, although the statute itself made no reference to such contracts.(e) An implied waiver of the benefits of a statute which requires frogs, etc., on railroads to be blocked or machinery to be guarded by continuance in service with knowledge that the law was not complied with, has been held not to be valid as a defense in an action for injuries resulting from the company's failure to so comply.(f) There is, however, a strong list of cases on the other side.(g) In Georgia (h) and Pennsylvania (i) express contracts limiting or denying the employee's right of action have been upheld. In the former State, a later statute declares such contracts void so far as they affect any liability fixed by law. Similar or more general statutes exist in a number of States.

Where the feature of relief benefits exists a new factor is introduced, and the rulings are quite uniform in favor of the contract. The terms of the contract are, in general, that the acceptance of benefits by the injured employee shall operate as a waiver of his right of action at law against the employer, and that if action is brought and is compromised or carried to judgment no claim shall lie against the fund. Such funds are usually maintained jointly by employers and employees, though the expense is not necessarily equally shared.

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[a] Missouri, K. & T. R. Co. *v.* Wood (1896), 35 S. W. 879. (Tex.)

[b] Lake Shore & M. S. Ry. Co. *v.* Spangler (1886), 44 Ohio St. 471, 8 N. E. 467; Little Rock & Ft. S. Ry. Co. *v.* Eubanks (1887), 48 Ark. 460, 3 S. W. 808; Richmond & D. Ry. Co. *v.* Jones (1891), 92 Ala. 218, 9 So. 276; Stone's Admr. *v.* Union P. R. Co. (1907), 89 Pac. 715 (Utah); Johnson *v.* Charleston & S. R. Co. (1899), 55 S. C. 152, 32 S. E. 2; Roesner *v.* Hermann (1881), 8 Fed. 782.

[c] Purdy *v.* Rome, etc., Ry. Co. (1891), 125 N. Y. 209, 26 N. E. 255.

[d] Runt *v.* Herring (1892), 49 N. Y. St. 126, 21 N. Y. Supp. 244.

[e] Kansas P. R. Co. *v.* Peavey (1883), 29 Kans. 169, 44 Am. Rep. 630; Tarbell *v.* Rutland R. Co. (1901), 73 Vt. 347, 51 Atl. 6.

[f] Narramore *v.* Cleveland, C., C. & St. L. Ry. Co. (1899), 96 Fed. 298; Davis Coal Co. *v.* Polland (1902), 158 Ind. 607, 62 N. E. 492; Western Furn. & Mfg. Co. *v.* Bloom (1907), 90 Pac. 821. (Kans.)

[g] Denver & R. G. R. Co. *v.* Gannon (1907), 90 Pac. 853 (Colo.); St. Louis Cordage Co. *v.* Miller (1903), 126 Fed. 495; O'Maley *v.* South Boston Gas Light Co. (1893), 158 Mass. 135, 32 N. E. 1119.

[h] Western & A. R. Co. *v.* Bishop (1873), 50 Ga. 465.

[i] Mitchell *v.* Pa. R. (1853), 1. Am. Law Reg. 717.

The Pennsylvania supreme court[a] held that an agreement to accept benefits, the acceptance to operate as a waiver of the right of action, was not contrary to public policy, inasmuch as it was not the signing of the contract prior to the injury (which would not in itself be effective) but the acceptance of benefits subsequent thereto that barred the action. Such a contract merely requires the employee to make his election whether to apply to the relief department or to sue.[b] But if there is lack of mutuality, or the defendant company fails to show that it assumes a fair portion of the burden of paying the benefits, even the acceptance of such benefits will not bar a suit for damages.[c] Nor will a partial payment of the agreed benefits avail as a bar to the action, though a full compliance with the terms of the contract would so operate.[d]

A contract that purports to bind the members of the relief department by the decision of an "advisory committee," making such decision final and conclusive, is void, as it undertakes to defeat the constitutional right of appeal to the courts for the redress of wrong.[e]

The agreement that claims on the benefit fund are forfeited by suit in which judgment is procured or a compromise is made was held valid in an Iowa case.[f] But the supreme court of New Jersey ruled that "the judgment intended is one by which the claimant recovers some compensation for the loss alleged," and granted a new trial in a suit for the benefit where damages at law had not been secured.[g]

A further variation in conditions is found in the case of persons not employees of the company causing the injury by its negligence or that of its employees, but who are being carried as a part of the contract of their employment. Such cases arise in the employment of express messengers, who, while not employees of the railroad company, are also not in the status of passengers. A contract between the express company and the railroad company over whose lines the former wishes to do business may contain a clause by which the express company agrees to hold the railroad company harmless from all liability for injuries to the employees of the former company while being transported, whether such injuries are caused by the negligence of the employees of the railroad company or not. Then by contract with its employees the express company may procure an agreement, as a condition of employment, that the applicant will assume all risks and make no claims for injuries however occasioned. A case involving such conditions was before the Supreme Court of the

[a] Johnson *v.* Philadelphia R. Co. (1894), 163 Pa. St. 134, 29 Atl. 854.

[b] Owens *v.* Baltimore & O. R. Co. (1888), 35 Fed. 715; Leas *v.* Pennsylvania Co. (1894), 10 Ind. App. 47, 37 N. E. 423.

[c] Chicago, B. & Q. R. Co. *v.* Miller (1896), 76 Fed. 439 (C. C. A.).

[d] Pennsylvania Co. *v.* Chapman (1905), 220 Ill. 428, 77 N. E. 248.

[e] Baltimore, etc., R. Co. *v.* Stankard (1897), 56 Ohio St. 224, 46 N. E. 577.

[f] Donald *v.* Chicago, B. & Q. R. Co. (1895), 93 Iowa 284, 61 N. W. 971.

[g] O'Reilly *v.* Pennsylvania R. Co. (1903), 69 N. J. L. 119, 54 Atl. 233.

United States,[a] where it was held that the position of an express messenger more nearly resembles that of an employee of the transporting railroad company than that of a passenger, and that his contract was a valid release of his employer and the railroad company from liability for injuries. Where the messenger is not aware of the contract between the companies he is not a party thereto and is not bound by its terms.[b]

DUTIES NONDELEGABLE.

Considering the employer's duties as matter of personal obligation, it would be apparent that directions to a servant, or the employment of persons to perform these functions in the employer's stead, will not in itself relieve him of the responsibility; but if there be a defective discharge of such duty by the person employed for its performance, the employer is still liable and will not be allowed to screen himself behind his agent. In determining the question of the employer's liability, the relations of fellow-servants are involved, or rather the doctrine of vice-principals, and the decision will be found to turn largely on the point of whether the negligent employee was, with reference to the act occasioning the injury, a coemployee or whether he was the representative of the employer in that particular act.

The courts have, in general, held quite consistently to the view of the nondelegable quality of the duties enumerated above, their ruling being that as to them the employer can relieve himself only by performance. In some cases, however, it has been held that the appointment of an employee to the duty was a sufficient discharge of the obligation. Thus in a number of Massachusetts cases the rule seemed to be that the master is liable only in case of failure to supervise such servants as he has appointed to discharge what are in other jurisdictions classed as nondelegable duties.[c] In a Pennsylvania case, also,[d] it was held that the employment of competent inspectors and affording them reasonable opportunities for work was a sufficient discharge of the duty to inspect, unless reasonable diligence would have disclosed the defective manner in which the work was being done. In a recent case, however, it was held by the supreme court of Massachusetts[e] that a showing that an employer had engaged competent engi-

[a] Baltimore & O. S. W. R. Co. *v.* Voigt (1900), 176 U. S. 498, 20 Sup. Ct. 38.

[b] Brewer *v.* New York, etc., R. Co. (1891), 124 N. Y. 59, 26 N. E. 324; Chamberlain *v.* Pierson (1898), 87 Fed. 420, 31 C. C. A. 157.

[c] Rogers *v.* Ludlow Mfg. Co. (1887), 144 Mass. 198, 11 N. E. 77; Lawless *v.* Connecticut River R. Co. (1883), 136 Mass. 1.

[d] Railroad *v.* Hughes (1888), 119 Pa. 301, 13 Atl. 286.

[e] Erickson *v.* American Steel and Wire Co. (1906), 193 Mass. 119, 78 N. E. 761, citing Moynihan *v.* Hills Co. (1888), 146 Mass. 586, 16 N. E. 574; Hooe *v.* Boston and Northern St. Ry. Co. (1904), 187 Mass. 67, 72 N. E. 341.

neers to design, install, and inspect appliances did not relieve him from his original responsibility of using due care to provide safe appliances.

From the first and more generally accepted principle it follows that the employer's ignorance of the incompetency of his vice-principal is not a defense; nor is it sufficient that a competent superintendent actually gave the proper orders. Reasonable care must also be exercised to follow up the orders and enforce conformity thereto. It is hardly necessary to add that the failure to appoint any superintendent is no less negligence than the appointment of one who is incompetent.

Supplies.

An exception to the rule that the master is liable for injuries arising from furnishing unsafe appliances was noted above (p. 6), the exception being in the case of purchases obtained from reputable dealers or manufacturers.[a] It would be carrying this principle of purchase but a step further for the employer to make provision for the supply of all instrumentalities by procuring them from independent contractors, and so evading responsibility for their imperfections; but only a few courts have sanctioned the doctrine of the nonliability of the employer to this extent.

In a Federal circuit court of appeals [b] and in California,[c] Georgia,[d] Illinois,[e] Missouri,[f] New Hampshire,[g] Rhode Island, [h] and Texas, [i] the employer's liability has been maintained in cases of injury arising from the neglect of independent contractors in the furnishing of appliances or the maintenance of a safe place, while in New York,[j] Virginia,[k] and New Jersey [l] the opposite position has been taken. In Pennsylvania, in a somewhat recent case,[m] the employer was held liable for the contractor's negligence, while an earlier decision [n] released an employer who had contracted for appliances which proved inadequate.

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[a] Fuller *v.* New York, etc., R. Co. (1900), 175 Mass. 424, 56 N. E. 574.

[b] Toledo Brewing and Malting Co. *v.* Bosch (1900), 41 C. C. A. 482, 101 Fed. 530.

[c] Shea *v.* Pacific Power Co. (1905), 145 Cal. 680, 79 Pac. 373.

[d] Central R. & Bkg. Co. *v.* Passmore (1892), 90 Ga. 203, 15 S. E. 760.

[e] Pullman Palace Car Co. *v.* Laack (1892), 143 Ill. 242, 32 N. E. 285.

[f] Herdler *v.* Buck Stove & Range Co. (1896), 130 Mo. 3, 37 S. W. 115.

[g] Story *v.* Concord & M. R. Co. (1900), 70 N. H. 364, 48 Atl. 288.

[h] Moran *v.* Corliss Steam Engine Co. (1899), 21 R. I. 386, 43 Atl. 874.

[i] Gulf, C. & S. F. R. Co. *v.* Delaney (1900), 22 Tex. Civ. App. 427, 55 S. W. 538.

[j] Devlin *v.* Smith (1881), 25 Hun. 206, affirmed (1882), 89 N. Y. 470.

[k] Norfolk & W. R. Co. *v.* Stevens (1899), 97 Va. 631, 34 S. E. 525.

[l] Conway *v.* Furst (1895), 57 N. J. L. 645, 32 Atl. 380.

[m] Philadelphia & R. R. Co. *v.* Trainor (1890), 137 Pa. 148, 20 Atl. 632.

[n] Ardesco Oil Co. *v.* Gilson (1870), 63 Pa. 146. Note also the attitude of the Massachusetts courts indicated by the cases cited in notes *c* and *e* on the preceding page.

Inspection and maintenance.

The duty of the maintenance of appliances and of inspecting their condition has been mentioned, an exception being made in the case of simple tools and appliances the condition of which was easily apparent to the user. In general the duty of inspection and maintenance is held to be nondelegable.[a] The States in which the contrary view has been held are Alabama,[b] Louisiana,[c] Maryland,[d] Massachusetts,[e] Mississippi,[f] New Jersey,[g] Ohio,[h] and Pennsylvania.[i] In New York the position of the higher courts has not been altogether consistent,[j] but seems generally to charge the employer with these duties.

A distinction that is sometimes made charges the employer with liability if the work of repair is done by a person specially delegated therefor and not engaged in using the apparatus. (See p. 50 below.) Another test that is sometimes used is found in the nature of the repairs themselves. If the repairs are to be of a permanent character, the duty of making them may be regarded as nondelegable; but if they are to be of a temporary character they may be intrusted to coemployees. The application of this rule depends on the facts and circumstances of each case, and can not here be gone into in detail.

Rules.

The duty to frame and promulgate rules and regulations is absolute, according to the courts of this country, the only exception noted being in the State of West Virginia,[k] where it was held that the choice of competent servants to receive and transmit necessary orders relieved the master, and that it was not required of him personally to see that notice actually came to the knowledge of all affected thereby. In

[a] Hough *v.* Texas & P. R. Co. (1879), 100 U. S. 213, 25 L. Ed. 612, quoting Ford *v.* Fitchburg R. Co. (1872), 110 Mass. 240, 14 Am. Rep. 598.

[b] Woodward Iron Co. *v.* Cook (1900), 124 Ala. 349, 27 So. 455.

[c] Hubgh *v.* New Orleans & C. R. Co. (1851), 6 La. Ann. 495, 54 Am. Dec. 565.

[d] Shauck *v.* Northern C. R. Co. (1866), 25 Md. 462.

[e] King *v.* Boston & W. R. Corp. (1851), 9 Cush. 112; but see Moynihan *v.* Hills Co. (1888), 146 Mass. 586, 16 N. E. 574, and Ford *v.* Fitchburg R. Co., note *a*.

[f] New Orleans, J. & G. N. R. Co. *v.* Hughes (1873), 49 Miss. 258.

[g] Harrison *v.* Central R. Co. (1865), 31 N. J. L. 293; modified in Nord Deutscher Lloyd S. S. Co. *v.* Ingebregsten (1895), 57 N. J. L. 402, 31 Atl. 619.

[h] Little Miami R. Co. *v.* Fitzpatrick (1884), 42 Ohio St. 318.

[i] Bemisch *v.* Roberts (1891), 143 Pa. 1, 21 Atl. 998.

[j] Cf. Malone *v.* Hathaway (1876), 64 N. Y. 5, 21 Am. Rep. 573, and Laning *v.* New York C. R. Co. (1872), 49 N. Y. 521, 10 Am. Rep. 417.

[k] Oliver *v.* Ohio River R. Co. (1896), 42 W. Va. 703, 26 S. E. 444.

Maryland [a] and Mississippi [b] it has been held that train dispatchers in giving orders were but fellow-servants with the train men, for whose negligence the employer was not responsible; but the general view corresponds with the rule given above.

Statutory duties.

As to duties prescribed by statute, it appears to be the rule that, apart from an express legislative declaration, they will be classed as delegable or nondelegable according to the common-law classification of such duties.

THE DEFENSES OF EMPLOYERS.

For a breach of duty to an employee resulting in injury an action will lie for the recovery of damages. Employers are not insurers, however, and are liable for the consequences, not of danger, but of negligence. Some duties are by statute made obligatory upon the employer to such an extent as practically to fix his liability in case of injuries entailed by their omission. Apart from such enactments, however, the employer may, in case of an action for damages, offer a defense based on the principle expressed in the maxim, "Volenti non fit injuria;" or he may undertake to prove the plaintiff's assumption of the risk, or his contributory negligence; or he may rely on the doctrine of common employment to relieve him from liability.

The principle of the maxim, "Volenti non fit injuria," is of general application, the meaning of the phrase as freely rendered being "That to which a person assents is not esteemed in law an injury." A clearer statement is that by an English judge, "One who has invited or assented to an act being done toward him can not, when he suffers from it, complain of it as a wrong." In a Massachusetts case the doctrine was thus expressed: "One who knows of a danger from the negligence of another, and understands and appreciates the risk therefrom and voluntarily exposes himself to it, is precluded from recovering for an injury which results from the exposure." In brief, the injured person has assumed the risk; and, apart from the contractual relation of employer and employee, there is a considerable class of cases in which this defense to an action for damages may be interposed. The invitation or assent is not necessarily or even commonly formal, but is inferable from conduct and conditions, often subsequent to the entrance upon the situation that gives rise to the circumstances to which the doctrine is applied.

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[a] Wonder *v.* Baltimore & O. R. Co. (1870), 32 Md. 411, 3 Am. Rep. 143.

[b] Millsaps *v.* Louisville, N. O. & T. R. Co. (1891), 69 Miss. 423, 13 So. 696.

English courts have more definitely fixed the application of the principle than is the case in this country, where it has been fully discussed in comparatively few jurisdictions, but neither in England nor in America are the authorities agreed on its application to concrete cases nor on its relation to the doctrines of contractual assumption of risk and of contributory negligence. Many authorities hold that the rule of the maxim covers the ground of the usual defense of assumed risks under the employee's contract, besides its own field of noncontractual relations, while others regard the two defenses as distinct. The question of its relations to the doctrine of contributory negligence is briefly discussed below. It may be said here, however, that the distinction is not always maintained, and it is held by some courts that the person described as volens may be better described as negligent, or, rather, that the person making the voluntary choice may be none the less guilty of contributory negligence. In so far as the liability of employers is concerned it appears that the more general application of the rule in this country follows the same lines as are observed in connection with the doctrines of assumed risks under the contract of employment, and until the subject is more definitely adjudicated its separate consideration in an undertaking of this scope does not seem advisable.

ASSUMPTION OF RISKS.

When a contract of employment is entered upon, the law imports into the agreement an assumption by the employee of the ordinary risks incident to the employment, and of such other risks as may be known to and appreciated by him. This is said to be a term of the contract, express or implied from the circumstances of the employment.[a] One seeking employment impliedly represents that he is capable therefor, and that he comprehends the ordinary risks.[b] Another view of the defense is that it does not arise from the contract of employment, but from the status of the employer and employee as fixed by common law, and is over and above the contract, being imposed by law upon the parties thereto, regardless of their desires.[c]

Knowledge.

The question of the employee's knowledge is in general controlling, but the knowledge may be either actual or imputed. A workman of mature years and ordinary intelligence, offering himself for employment, is presumed to know and appreciate the conditions and to

[a] Narramore *v.* Cleveland, C., C. & St. L. R. Co. (1899), 96 Fed. 298, 37 C. C. A. 499.

[b] Wagner *v.* Chemical Co. (1892), 147 Pa. 475, 23 Atl. 772.

[c] Denver & R. G. R. Co. *v.* Norgate (1905), 141 Fed. 247; Martin *v.* Chicago, R. I. & P. R. Co. (1902), 118 Iowa 148, 91 N. W. 1034.

assume the risks ordinarily incident to the service and to have notice of all risks which, to one of his experience and capacity, are, or ought to be, open and obvious. He does not assume risks arising from conditions of which he was actually and excusably ignorant; nor is he required to use more than ordinary care to discover existing conditions.(a)

There is, however, one class of cases in which the question of knowledge is not raised, and that is where the conditions complained of are the result of the employee's own choice or selection of a course of action. In such cases the risk is assumed irrespective of any implied term in his contract of service, the employee being held to be responsible for the proximate results of his own conduct.(b)

Ordinary risks.

The determination of what are ordinary risks evidently becomes important in view of the fact that with regard to them the employer is relieved of all responsibility, even if the employee did use ordinary care, unless by reason of inexperience or minority he was not chargeable with having assumed such risks.(c)

The courts have sometimes defined ordinary risks as those that pertain to the employment after the employer has discharged his duty as to safe place, appliances, etc., and which ordinary care on his part can not guard against. Under another conception the word "ordinary" is held to be construed in its usual sense. This may be taken to mean either that the risk is so obviously a normal incident of the employment that an intelligent observer would recognize it as such, and the dangers arising therefrom as constantly possible; or it may imply that the employment unavoidably and of necessity involves the risks, which is much the same as holding that the master's care can not obviate them.

These risks are such as arise from the negligence of fellow-servants, unless the employer was negligent in employing incompetent workmen; or from the nature of the instrumentalities used; or from the conditions, whether permanent or temporary, of the conduct and nature of the business. The master can not undertake, for instance, to make railroad labor or the manufacture of explosives as safe as many other employments, and the hazards of such industries are held to be assumed according to the standard for the industries themselves. In like manner works of construction and repair, in regard to which the master's liability was found to be modified, cast upon the em-

[a] Allen *v.* Boston & M. R. Co. (1898), 69 N. H. 271, 39 Atl. 978; Comben *v.* Belleville Stone Co. (1897), 59 N. J. L. 226, 36 Atl. 473.

[b] Mellor *v.* Merchants' Mfg. Co. (1890), 150 Mass. 362, 23 N. E. 100.

[c] Jones *v.* Mfg. & Invest. Co. (1899), 92 Me. 565, 43 Atl. 512; Goodes *v.* Boston & A. R. Co. (1894), 162 Mass. 288, 38 N. E. 500.

ployee a correspondingly larger degree of risk, which, by this principle, he is held to assume. This rule applies only to employees actually engaged upon the work, and the risks assumed are those that arise only from the work in hand and not from defects in portions of the work already completed.(a)

Extraordinary risks.

Risks which may be obviated by the exercise of reasonable care on the part of the employer are classed as extraordinary, and these the employee is held not to have assumed without a knowledge and comprehension of the dangers arising from the employer's negligence. If the dangers are patent or are brought to the knowledge of an employee, his entering upon or remaining in service is presumed to have waived his claim against the employer for resulting damages.(b) In the first case he will be held to have made his contract in the light of existing conditions; and as to risks arising during employment it has been said that if a servant continues to use an appliance which he knows to be dangerous he does so at his own risk and not at that of his employer.(c) It must appear, however, that the risk was actually appreciated. While a failure to notify the employer of discovered or known risks is construed as indicating the employee's willingness to continue to work while they exist, the risk is not thrown upon the employer by a mere notification not replied to by his promise to repair.(d) If the alternative of continuing to work with the defective appliance or of leaving the employment is offered, and the employee continues to work, he will be held to have assumed the risk.(e) A promise to repair can be relied upon only for a reasonable time, after which the risk will be upon the employee.

Forgetfulness caused by pressure of duties.

Temporary inadvertence or forgetfulness of dangerous conditions, even if occasioned by the urgency of the situation, is generally held not to relieve the employee from the burden of the assumed risk, though as to this element the courts are not agreed. In a number of New York cases allowance has been made for the forgetfulness of an employee whose attention was diverted from imminent danger by the pressure of his duties,(f) while the United States circuit court of

a Evansville & R. R. Co. *v.* Maddux (1893), 134 Ind. 571, 33 N. E. 345.

b Tuttle *v.* Detroit, G. H. & M. Ry. (1887), 122 U. S. 189, 7 Sup. Ct. 1166.

c Washington & G. R. Co *v.* McDade (1890), 135 U. S. 554, 10 Sup. Ct. 1044.

d East Tennessee, V. & G. R. Co. *v.* Duffield (1883), 12 Lea 63, 47 Am. Rep. 319.

e Leary *v.* Boston & A. R. Co. (1885), 139 Mass. 580, 2 N. E. 115.

f Wallace *v.* Central Vermont R. Co. (1893), 138 N. Y. 302, 33 N. E. 1069; Fitzgerald *v.* New York C. & H. R. R. Co. (1899), 37 App. Div. 127, 55 N. Y. Supp. 1124, etc.

appeals[a] and the supreme courts of Iowa[b] and Rhode Island[c] have given the idea recognition, though in no jurisdiction can the practice be said to be uniform. The prevalent rule seems to be that the employee is not allowed to deny his assumption of the risk on account of the rapidity of thought or action necessary to meet the exigencies of any occasion, if it is established that he had acquired before the accident a full comprehension of existing risks.

CONTRIBUTORY NEGLIGENCE.

When a risk involves such a degree of danger that a prudent man would not assume it, the defense to an action by an injured employee is not that the plaintiff by his contract assumed the risk, but that he was, by his conduct, guilty of contributory negligence. The line is not clearly drawn between the two defenses, nor is it always easy to do so, inasmuch as the facts in a given case may support either defense. The principles are distinct, however, as assumption of risk is an implied or actual agreement, entered into before the happening of the accident, to waive compensation from the employer for injuries resulting therefrom; or, it is an incident of the contract, read into it by the fixed rules of law. If, however, there has been contributory negligence, there is no reference to either contract or status to determine rights, but only to the conduct of the employee. If under all the attendant circumstances he fell short of reasonable and ordinary care, the defense of contributory negligence will lie against him.

The rule is announced by Cooley as follows: "If the plaintiff or party injured, by the exercise of ordinary care under the circumstances, might have avoided the consequences of the defendant's negligence, but did not, the case is one of mutual fault, and the law will neither cast all the consequences upon the defendant, nor will it attempt any apportionment thereof."[d] The contributing negligence must be that of the party injured, that of a fellow-servant cooperating with the negligence of the master being no defense to the latter for injuries resulting from the combined negligence.

Comparative negligence.

In Illinois for a number of years a doctrine of comparative negligence prevailed, according to which the courts attempted to apportion the fault, and, if the preponderance of negligence seemed to be chargeable to the employer, to award damages in a corresponding

[a] West *v.* Southern P. Co. (1898), 29 C. C. A. 219, 85 Fed. 392.

[b] Strong *v.* Iowa C. R Co. 1895), 94 Iowa 380, 62 N. W. 799.

[c] Disano *v.* New England Steam Brick Co. (1898), 20 R. I. 452, 40 Atl. 7.

[d] Torts, p. 674.

amount. The rule seems to have been first applied in an employer's liability case in Chicago and Northwestern Railway Company *v.* Sweeney (1869) (52 Ill. 325). This rule was continuously followed at least until 1886, ([a]) but is at present denied in that State, ([b]) and a negligent employee is now barred from recovery unless it appears that his employer was guilty of willful negligence in connection with the occasion of the injury. ([c])

Kansas has been classed by some writers as one of the jurisdictions in which this doctrine is favored, the supreme court of that State having held that where the negligence of the defendant is great and that of the plaintiff but slight, the latter may recover. ([d]) This court has, however, repeatedly denied that it countenances the doctrine of comparative negligence, and it may be fairly doubted if more could be said than that the rule there followed is simply the common-law doctrine of contributory negligence somewhat peculiarly stated. The same may be said of Tennessee, where, if the negligence of the defendant was the efficient cause of the injury, the fact that the injured party was somewhat in default will not bar his recovery if it does not amount to a lack of ordinary care, even though he might have escaped by the use of extraordinary care. ([e]) The negligence of the plaintiff will be taken into consideration, however, in mitigation of the damages to be awarded, and where the fault is equal, no damages will be allowed. The defendant, to be clear of negligence, must show compliance with all requirements of the law. ([f])

It may here be noted that the doctrine of comparative negligence was incorporated into the Federal employers' liability law of 1906, recently declared unconstitutional, though not on this ground, and is found in a number of other recent statutes; but in general the rule is as stated in the quotation from Cooley above.

Cause of injury.

The negligence of an employee will not be a bar to his action unless it is the actual and proximate cause of his injury. Conduct merely furnishing the occasion or condition of the injury does not amount to negligence. ([g]) Even if the employee was guilty of negligence which may have contributed to the accident, yet if the employer by the exercise of ordinary care and diligence could have avoided its occurrence, the antecedent negligence of the employee has been held not to destroy his right of action. Still less will the negligence of the

[a] Chicago & A. R. Co. *v.* Johnson, 116 Ill. 206, 4 N. E. 381.
[b] City of Macon *v.* Holcomb (1903), 205 Ill. 643, 69 N. E. 79.
[c] Chicago & A. R. Co. *v.* Myers (1901), 95 Ill. App. 578.
[d] Wichita & W. R. Co. *v.* Davis (1887), 37 Kans. 743, 16 Pac. 78.
[e] Nashville & C. R. Co. *v.* Carroll (1871), 6 Heisk. 347.
[f] Louisville & N. R. Co. *v.* Burke (1868), 6 Coldw. 45.
[g] Smithwick *v.* Hall & U. Co. (1890), 59 Conn. 261, 21 Atl. 924.

servant operate as a defense where it is followed by willful or wanton negligence on the part of the master. Where injuries result in death, the right of the personal representative to sue, which does not exist under the common law, but is now given by statute in most States, is subject to the same limitations as would have been the right of the injured person if he had survived.

What negligence bars recovery.

What does and what does not constitute such negligence as to be a bar to an employee's claim for damages have not been consistently ruled upon by the courts. The test varies according to circumstances, the rule being that the servant must conduct himself as a prudent person would in a like position.

A servant engaging in work for which he is not qualified by previous experience, and incurring injury, is held to have been negligent. In some jurisdictions the master has not been made responsible even though he knew when he hired the employee that his inexperience made the labor abnormally hazardous, but such views are not generally accepted.

So also if the precautions appropriate to dangerous situations are omitted, or if an unnecessarily dangerous method of doing work is chosen where the employee has the power of choice, or if he assumes or remains in a position of unnecessary danger, he will be held to be guilty of contributing to his own injury. Inattention to surroundings, and going in the line of duty into a place of unusual danger without notifying those from whose reasonably anticipated acts harm might befall him, have the same effect. The fact that the presence of an employee in the place where the injury was received was not required for the performance of his duties will prevent recovery. Using an appliance for a purpose other than that for which it was intended, if suggestive of danger to a person of reasonable intelligence in the situation of the workman, will usually be a bar to successful action. The use of defective or otherwise unsuitable instrumentalities may be negligent, though if a showing of due care in the circumstances is made, and the danger was not great and obvious, an action for damages may be maintained.

Violation of orders or of specific valid rules of which the employee has notice, and the neglect of warnings with reference to any of the acts named above will usually be held to imply negligence as a matter of law.[a] In Texas [b] and New York,[c] however, the violation

[a] Coops *v.* Lake Shore & M. S. R. Co. (1887), 66 Mich. 488, 33 N. W. 541; Louisville & N. R. Co. *v.* Woods (1895), 105 Ala. 561, 17 So. 41.

[b] Ft. Worth & D. C. R. Co. *v.* Thompson (1893), 2 Tex. Civ. App. 170, 21 S. W. 137.

[c] Gross *v* Pennsylvania, P. & B. R. Cc. (1891), 42 N. Y. S. R. 808, 16 N. Y. Supp. 616.

of a rule does not of itself furnish grounds for imputing negligence. Violation of municipal or statutory regulations, though it be sanctioned by the employer or even if it be done by his direction, will disqualify the employee for maintaining an action. If, however, the order was not known by the employee to contravene a statute, his obedience has been held not to bar recovery. Departure from the customary method of doing work has been held to indicate negligence, though not conclusively.

Remaining in place of danger.

The general rule that the employee loses his right to a recovery by remaining at work after the discovery of unsafe conditions predicates a duty to leave the service in due time to escape the threatened dangers. How far he may omit this duty and still have recourse to his employer for compensation for injuries can not be absolutely determined in any general sense, but it is allowable for the employee to remain a reasonable time, and especially if his immediate departure would jeopardize the safety of the public or the interests of his employers—as in train service on railways.[a]

It is not a justification for the employee that he is restrained by a fear of losing his position. The negligence of the employer has the effect of releasing the employee from his contract, if any, and the continuance at work under the new conditions is not obligatory. Some courts have taken a more lenient view, however, and if the fear of discharge is well grounded and the employee's conduct falls short of recklessness, these courts do not incline to strictly enforce the doctrine of negligence where service is continued under the conditions indicated.[b]

Knowledge of danger.

It is not negligence for one to expose himself to dangers of which he is excusably ignorant; so that even if defects are known to exist the employee may still recover if it appears that the dangers involved were not appreciated. They must be so obvious that a reasonably prudent man would know and avoid them. A knowledge of the defects, however, may be of such a kind, whether actual or inferred from their duration or from attendant circumstances, that an appreciation of the consequent dangers will be presumed. If the abnormally dangerous conditions were so suddenly and unexpectedly produced or developed as to make it unreasonable to hold the employee to an anticipation of them, his failure to avoid their results will not be considered negligence as matter of law. If, however, the prior

[a] Irvine *v.* Flint & P. M. R. Co. (1891), 89 Mich. 416, 50 N. W. 1008.
[b] Mason *v.* Richmond D. R. Co. (1892), 111 N. C. 482, 16 S. E. 698.

negligence of the employee produced the dangerous conditions, no recovery can be had.

The doctrine that knowledge furnishes a basis for imputing negligence is modified by the employer's promise to guard against dangers or to repair, by his assurance of safety, and by proof that the injury was incurred while the employee was obeying direct orders, which points will be further referred to below.

Negligence not imputable, when.

The acts and omissions indicated above as furnishing the conditions from which negligence will be inferred may have been committed by such persons or under such circumstances that the inference of culpability will be destroyed.

Some of the chief defenses of the employee against the charge of contributory negligence are mentioned below.

ATTEMPTS TO SAVE LIFE, ETC.—Exposing one's self to danger in the attempt to save life, unless so hopeless that the act would amount to rashness, is not negligence as a matter of law; ([a]) though the courts will not sanction a reckless or excessive risk.([b]) The general rule seems to be that the courts will not examine too critically the grounds of the plaintiff's reasons for expecting success, nor will he be charged with fault if the actual danger was greater than he anticipated. The same principle controls, though not extending so far, in cases where the peril is encountered in the effort to preserve the property of the employer.

EMERGENCIES.—In general the fact of an emergency will be held to have a qualifying effect, both because of the unusual promptitude of action required, and because the mind is likely to become more or less confused under such circumstances. So if a workman is so engrossed with the performance of duty that existing dangers are momentarily forgotten, the necessity for attention to the duty may relieve the forgetful employee of the charge of contributory negligence.([c]) If the alarm for one's own safety was unnecessary or haste was made under conditions not warranting it, there will be no allowance. An act performed involuntarily, under the influence of bodily pain, is not as a matter of law, negligent, even if the act under other circumstances would have precluded recovery on the ground of negligence.

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[a] Central R. Co. *v.* Crosby (1885), 74 Ga. 737, 58 Am. Rep. 463; Pennsylvania Co. *v.* Roney (1883), 89 Ind. 453, 46 Am. Rep. 173; Maryland Steel Co. *v.* Marney (1898), 88 Md. 482, 42 Atl. 60.

[b] Rawlston *v.* East Tennessee, V. & G. R. Co. (1894), 94 Ga. 536, 20 S. E. 123; Writt *v.* Girard Lumber Co. (1895), 91 Wis. 496, 65 N. W. 173.

[c] Kane *v.* Northern C. R. Co. (1888), 128 U. S. 91, 9 Sup. Ct. 16.

NECESSITY, ETC.—Apparent necessity may justify an otherwise negligent action, unless obviously rash.[a] A master whose rules or customary practice prescribe a certain mode of performing work is in some degree estopped from bringing in the defense of contributory negligence where an employee has been injured while conforming to such rule or custom, though to what extent has not been accurately determined. If the injured employee incurred his injury on account of conditions leading thereto which were outside of his power to control, this fact will tend to negative the charge of negligence; so also of his reliance on the presumption that tools and appliances are in good condition and that the work in each department will be prudently done. Minority is also frequently a defense to the charge of negligence, either absolute or partial, varying with the age and the mental and physical capacity of the individual. In connection with each of the above qualifications the remark made in a previous statement should be kept in mind, that where the emergency or other dangerous condition is the result of prior negligence of the injured employee, these mitigating or rebutting elements are of no avail against a charge of contributory negligence.

Local rules.

In a few States local doctrines have modified to a greater or less degree the customary rule as to contributory negligence and assumption of risks. Thus in Alabama,[b] the fact of an employee's contributory negligence has been held not to be a bar to recovery where the injury was caused by the wanton or reckless conduct of a fellow-servant or other employee for whose conduct the employer was responsible. Georgia [c] makes contributory negligence a ground for a reduction of the amount of damages to which the plaintiff would be otherwise entitled rather than a bar to complete recovery. To what extent this is the result of legislation will receive consideration below. The rule followed in Illinois has already been mentioned (pp. 23, 24). The language of the courts of this State in a number of cases is such that it can not be determined to what extent the doctrine of the assumption of risks is recognized, or rather, perhaps, what distinction is made between assumption of risks and contributory negligence. In Missouri the defense of assumption of risks has been in large measure disallowed. In a very recent case [d] the State doctrine on this subject was designated by a court of that State as unique, in that "the servant assumes only such risks as are ordinarily inci-

[a] Missouri Furnace Co. *v.* Abend (1883), 107 Ill. 44, 47 Am. Rep. 425.
[b] Louisville & N. R. Co. *v.* York (1901), 128 Ala. 305, 30 So. 676.
[c] Pierce *v.* Atlanta Cotton Mills (1887), 79 Ga. 782, 4 S. E. 381.
[d] Obermeyer *v.* Chair Co. (1906), 120 Mo. App. 59, 96 S. W. 673.

dent to his employment, after the master has performed his whole duty to provide him a reasonably safe place to work and reasonably safe appliances with which to do this work;" while if the master is negligent in these respects and the servant knows, or by the exercise of ordinary care could have known, of the unsafe place or appliances, and yet continues in the service, he does not thereby assume the risk occasioned by the negligence of the master. Contributory negligence can be charged, however, if the danger was so great and obvious that a prudent man would not work under the circumstances, or if the work could not be done with reasonable safety by the use of caution.(a)

The rule in Tennessee appears to be similar to that followed in Georgia, that if the employer's negligence occasioned injury to an employee who was himself negligent in the premises, the employee's negligence goes in mitigation of the damages, but does not excuse the employer.(b) The wording and interpretation of statutes give rise to other differences, which will be considered under the head of statutory liability.

THE "FELLOW-SERVANT" RULE.

The remaining defense to an employee's action for damages is what is known as the "fellow-servant" rule, or the doctrine of common employment. According to this, where the employer has discharged his duties as to a safe place, safe and suitable appliances, competent fellow-servants, etc., he is not liable to an employee for the acts or negligence of any mere fellow-servant or coemployee, provided such coemployee does not represent the employer. Or, as it has been otherwise stated, "A master is not bound to indemnify one servant for injuries caused by the negligence of another servant in the same common employment as himself, unless the negligent servant was the master's representative." If, however, the negligence of a coservant concurs with the negligence of an employer in causing the injury, the injured employee not contributing thereto, the employer will be liable in damages.

The well-known diversity, not to say confusion and contradictoriness of the rulings of the courts as to the application of this rule arises from the lack of precise and generally accepted definitions of the idea of common employment and of representation of the master. The relations of this doctrine to the other elements which determine employer's liability are such that practically all that has been

[a] See also Hamilton *v.* Rich Hill Coal Min. Co. (1892), 108 Mo. 364, 18 S. W. 977.

[b] Nashville & C. R. Co. *v.* Carroll (1871), 6 Heisk. 347.

said with reference to the duties of the employer and the assumption of risks by the employee must be read in the light of the rulings of the jurisdictional courts on the subject, although the principles involved are held to be those of general law. In an opinion on a fellow-servant case which was before the Supreme Court of the United States a few years ago it was said that "there is perhaps no one matter upon which there are more conflicting and irreconcilable decisions in the various courts of the land than the one as to what is the test of common service, such as to relieve the master from liability for the injury of one servant through the negligence of another."(a) Not only do the courts of the various States differ, but in the individual States are found fluctuations of opinion from time to time, and the acceptance of new standards, with departures from former positions, so that it is important to know the date of an adjudication in order to determine the present construction in the State. In the Supreme Court itself we find a decision of 1884 strongly modified in 1893 and practically reversed in 1899. (See pp. 38, 39, below.)

The attempt has been made in a number of States to fix by statute the relations of employees to one another, and to determine the liability of the employer for their acts or negligence; and this would appear to be the only practical method of attempting a solution of the problem as it exists to-day. It must be confessed, however, that even where statutes of different States are closely similar if not identical in phraseology, the effect of local interpretations is apparent in the varying constructions adopted.

The common-law rule was enounced in England and America at about the same time, apparently independently, and to practically the same effect. Subsequent developments have been more favorable to the employee in this country than in England, however, some States having apparently lost sight of the foundations of the rule.

The reasons offered by the courts for the rule have been various, one being found in the view that the master's responsibility is at an end when he has used ordinary care to employ competent servants. It is held that the employee assumes the risk of the possible negligence of a coemployee as one of the incidents of the employment.(b) In another opinion of our Supreme Court it was said that the obvious reason for exempting the employer from liability is that the employee has or is supposed to have such risks in contemplation when he engages in the service, and his compensation is arranged accordingly, so that he can not in reason complain if he suffers from a risk which he has voluntarily assumed, and for the assumption of which he is paid.(c) Another reason is found in alleged grounds of public

[a] Baltimore & O. R. *v.* Baugh (1893), 149 U. S. 368, 13 Sup. Ct. 914.

[b] Hough *v.* Texas & P. R. Co. (1879), 100 U. S. 213, 25 L. Ed. 612.

[c] Chicago, M. & St. P. R. Co. *v.* Ross (1884), 112 U. S. 377, 5 Sup. Ct. 184.

policy, as tending to make the employees more watchful over their own conduct and that of their fellows, thus benefiting employers, employees, and the public alike by the greater care with which they perform their duties.(a) In close connection herewith is the claim that any marked enlargement of liability to capital would lead to the withdrawal of capital from industrial enterprise, thus reducing the opportunities of employment and inflicting damage upon the whole community.(b)

Each of these reasons has been the subject of adverse criticism, and no one of them seems to give a satisfactory ground for excepting employees from the benefits of the doctrine of respondeat superior, or for compelling the employee to bear the burden of "pure accidents" which occur in the prosecution of undertakings the advantages of which are to be reaped by the employer. The last two reasons mentioned above have perhaps been most frequently relied on as supporting the customary rule, though no such results as are therein indicated have followed the adoption of statutes greatly enlarging the rights of employees to recover for injuries following upon industrial accidents.

The chief points requiring determination in any action involving the principles under consideration are those of common employment and of representative capacity. If it appears that the injuries complained of are the result of the negligence of a coemployee, the only hope of the plaintiff lies in showing that the negligent person was a vice-principal, representing the master at the time, and so devolving upon him a liability for the acts or omissions charged.

Common employment.

The first question, then, to be considered is what constitutes common employment. It was said in a leading case that, "prima facie, all who enter into the employ of a single master are engaged in a common service, and are fellow-servants,"(c) but this broad statement will not answer as a conclusive test. Not only employment by a common master, but also engagement in the performance of duties that may reasonably be said to tend to the accomplishment of the same end is necessary to meet general acceptance by the courts; nor is it a sufficient answer to say that all serve the profit or convenience of a common employer. Where another servant than the plaintiff, employed for a purpose entirely different from his duties, has negligently caused the injury complained of, it may well be said that they are not fellow-servants. But even with this qualification the statement is not def-

[a] Chicago, M. & St. P. R. Co. *v.* Ross, supra.

[b] New Pittsburg Coal & C. Co. *v.* Peterson (1893), 136 Ind. 398, 35 N. E. 7.

[c] Baltimore & O. R. *v.* Baugh, supra.

inite enough to be of much use in determining particular cases, and the expressions used by judges in passing on the question of common employment throw little light on the subject. "Engaged in the same general business," "the same general undertaking," or "in promoting one common object" are frequent modes of expression, though in other cases the somewhat more restricted phrases, "services having an immediate common object," or "working in the same place to subserve the same interests," are used. The question involves both law and facts, but where the latter are undisputed, the decision becomes simply a matter of law, and the trial jury will not pass upon it.

CONTEMPLATED RISKS.—A theory that has been adopted in many cases is that the service is common if the negligence of the delinquent servant was, in a fair and reasonable sense, one of the risks contemplated by the injured employee in undertaking or continuing in his employment.(a) This is a reference of the case to the doctrine of assumed risks previously discussed, and involves the principles of knowledge, actual or presumptive. By this theory the relation of the duties of the injured and the negligent employees becomes the criterion, together with the question of the probability of the negligence of the one affecting the safety of the other. An injured employee's action will not be barred as matter of law by the single fact of service of a common master where the probabilities of injurious consequences from the delinquent servant's negligence were too remote to be reasonably foreseen;(b) but mere accidental occurrences which no one could reasonably anticipate or provide against are outside the rule of liability on general grounds. That a knowledge of the conditions under which coemployees are mutually employed is influential here further appears from the frequent emphasis placed on the fact of proximity one to another in the places of their employment. In fact it was said in a Texas case(c) that "the rule should be confined to those servants whose duties bring them into such juxtaposition that one would be enabled to observe the negligence of his fellows." But this was only as proposing a reasonable limitation on the fellow-servant doctrine, which, however, the court did not feel able to adopt in view of the great weight of authority to the contrary, declaring that the remedy lay alone with the legislature. Yet inasmuch as the question is not one of locality, but of likelihood of connected consequences, mere remoteness is not sufficient to negative the idea of co-service where the other elements are present. So also the fact that duties are diverse, or are performed in different departments, or under

[a] Chicago, M. & St. P. R. Co. *v.* Ross, supra.

[b] Northern P. R. Co. *v.* Hambly (1894), 154 U. S. 349, 14 Sup. Ct. 983.

[c] St. Louis, A. & T. R. Co. *v.* Welch (1888), 72 Tex. 298, 10 S. W. 529.

the direction of different foremen is not conclusive. Probability of contact or of resultant danger from the negligence of an employee is a necessary element in the application of this theory, though at what point the line shall be drawn is often difficult to determine. A manufacturer's domestic servant is not in fellow-service with an employee in his factory, nor is the driver of a butcher's wagon a coemployee with workmen engaged in building an addition to the employer's premises. The distinction is not so easy, however, where the nature of the employments is not so diverse, and the fluctuations in the position of the courts above referred to are apparent in cases where this principle is involved. Thus in Indiana[a] a bridge carpenter being conveyed to his place of work was held not to be a coservant with the engineer of the train on which he was riding, a decision which was followed by the Iowa courts in 1865;[b] though apparently the rule had already been abrogated in Indiana,[c] and subsequent rulings indicate that the plaintiff could not now recover in the latter State under the circumstances above set forth.

DEPARTMENTAL DOCTRINE.—A second theory, based on a different test from that of contemplated risk, is naturally suggested by the considerations indicated above. In the application of this theory the classification turns on the relation of employees in different departments of the employer's establishment or business, more or less segregated. In the courts in which it is adopted the general test is one of the identity or diversity of the departments in which the plaintiff and the delinquent employee were at work. Since, however, no satisfactory definition of the term "department" has yet been furnished, the test may be more accurately said to be one of consociation of duties, i. e., such a relation of the duties of the injured employee and those of the delinquent coemployee as that the former had a reasonable opportunity for protecting himself from injury by his own efforts. All courts would unite in ruling out the defense of coemployment in certain classes of cases, and there is a hopeless contrariety of views as to where this defense shall be allowed and where denied. Even in those States where the defense is most frequently based on what has been called the departmental doctrine, this test is not the only and final one, as it is found that while departments may be distinct, those employed therein may be thrown into such contact that fellow-service can not be denied, and vice versa. While, therefore, the two theories presented lead to real and wide differences of view, there is a class of cases where they approach, and the conclusions reached therein may be referred indifferently to the one reason or the other.

[a] Gillenwater *v.* Madison & I. R. Co. (1854), 5 Ind. 339, 61 Am. Dec. 101.
[b] Donaldson *v.* Miss. & M. R. Co., 18 Iowa 280, 87 Am. Dec. 391.
[c] Slattery *v.* Toledo & W. R. Co. (1864), 23 Ind. 81.

The jurisdictions in which consociation of duties has been more or less uniformly made the test of coservice are Georgia,[a] Illinois,[b] Kentucky,[c] Louisiana,[d] Missouri,[e] Nebraska,[f] Utah,[g] Virginia,[h] Washington,[i] West Virginia,[j] the Territory of Arizona,[k] and such Federal Courts as have adopted the rule to conform to local practice. It is also followed in Tennessee,[l] but is applied to railway service only. It will appear, however, from a review of the cases that, in some of the States named, the courts have at times manifested a preference for the theory of contemplated risks, which, as already seen, shows slight regard for departmental boundaries.

ELEMENTS OF TEST.—As stated above, the mere fact of difference of departments is not conclusive, though according to the theory under consideration it is matter of evidence. As the result of an analysis of a large number of cases in which this doctrine controls, the following elements are presented by a leading text writer[m] as determinative of the rights of the injured employee:

a. Whether or not he had an opportunity of observing the extent to which the negligent servant was competent for the performance of his duties and the manner in which he habitually conducted himself.

b. Whether or not he was able to take appropriate measures to ward off a danger occasioned by an act already committed or about to be committed while the work was actually in progress.

c. Whether he could or could not lessen the risk of injury by exercising upon the negligent servant an influence calculated to promote caution and diligence on the part of the latter.

d. Whether or not he was able to protect himself by reporting delinquencies, thus securing the more careful supervision, or, if needful, the discharge of negligent employees.

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[a] Cooper *v.* Mullins (1860), 30 Ga. 146, 76 Am. Dec. 638; though the doctrine seems to be repudiated in this State (see Brush E. L. & P. Co. *v.* Wells (1900), 110 Ga. 192, 35 S. E. 365).

[b] Chicago & N. W. R. Co. *v.* Moranda (1879), 93 Ill. 302, 34 Am. Rep. 168.

[c] Kentucky C. R. Co. *v.* Ackley (1888), 87 Ky. 278, 8 S. W. 691.

[d] Dobson *v.* New Orleans & W. R. Co. (1900), 52 La. An. 1127, 27 So. 670.

[e] Sullivan *v.* Missouri P. R. Co. (1889), 97 Mo. 113, 10 S. W. 852.

[f] Omaha & R. V. R. Co. *v.* Krayenbuhl (1896), 48 Nebr. 553, 67 N. W. 447.

[g] Armstrong *v.* Oregon Short Line & U. N. R. Co. (1893), 8 Utah 420, 32 Pac. 693.

[h] Torians *v.* Richmond & A. R. Co. (1887), 84 Va. 192, 4 S. E. 339.

[i] Uren *v.* Golden Tunnel Min. Co. (1901), 24 Wash. 261, 64 Pac. 174.

[j] Madden *v.* Chesapeake & O. R. Co. (1886), 28 W. Va. 610, 57 Am. Rep. 695.

[k] Hobson *v.* N. Mex. & A. R. Co. (1886), 11 Pac. 545.

[l] Nashville & C. R. Co. *v.* Carroll (1871), 6 Heisk. 347; Coal Creek Min. Co. *v.* Davis (1891), 90 Tenn. 711, 18 S. W. 387.

[m] Labatt, "Master and servant," p. 1390.

Not all these questions are likely to be raised in any single case, but the answer to the one or more present in a given instance may be found to be decisive of the rights of an injured servant, even to the extent of entirely ignoring so-called departmental classifications.

Representation of the employer.

No court goes so far as to assert without qualification that all employees of a common master, or even in the same department, are coemployees in such sense as to relieve the master of responsibility for the negligent acts of those who are the master's representatives, either permanently, or as to the matter in hand. But here again there are as irreconcilable differences as any that have been noted, and it will be possible only to present the different views taken by the various courts without attempting to summarize them or to bring them into harmony.

There are in general two grounds on which adjudications are based: One, the mere superiority in rank of the negligent employee, and the other, the nature of the injurious act, i. e., whether or not it was one which was connected with the discharge of the so-called nondelegable duties of the employer. Like other distinctions made in the applications of the fellow-servant rule, there are cases in which the decision might be reached by the use of either test, but in other cases the adoption of the one rule will be found to be decisive along lines not capable of being reached by the other unless by giving a special meaning thereto.

TEST OF RANK.—The representative of the employer is most frequently termed by the courts a vice-principal, though the actual functions of his employment and not the designation by which he is known while at work will be determinative in any case. This rule has been made to extend so far as to relieve the employer even when the injured employee in good faith regarded the negligent employee as his superior, not knowing of the latter's discharge from that position.(a) On the other hand, a coservant intrusted temporarily with the duties of a vice-principal must be answered for by the employer no less than if he were permanently holding the position. Representation, however, must be actual. In a majority of the jurisdictions of the Union the mere fact of superiority of rank is not sufficient to charge the employer with liability for the negligence of the superior servant, though the negligence complained of may have been connected with the giving of orders.(b) Nor do these courts consider that the adding on of the power to hire and discharge is sufficient

[a] Allen *v.* Goodwin (1893), 92 Tenn. 385, 21 S. W. 760.

[b] Kimmer *v.* Weber (1897), 151 N. Y. 417, 45 N. E. 860; McLean *v.* Blue Point G. M. Co. (1876), 51 Cal. 255.

to convert a foreman of subordinate grade to the rank of vice-principal, as mere fear of discharge will not justify the assumption of undue risks.(a) And this is true even when there is power of control.(b) Thus it was said in a recent case that "a servant who sustains an injury from the negligence of a superior agent, engaged in the same general business, can not maintain an action against their common employer, although he was subject to the control of such superior agent, and could not guard against his negligence or its consequences."(c) This rule is based on the theory that the contracting employee assumes the risk of his superior's negligence as one of the ordinary risks of his employment. This does not cover cases where the order directs a departure from the original scope of the servant's employment, such order being attributed, by an apparent suspension of the rule, to the master himself, so that he is held liable for any negligence connected therewith.(d) The rule is also subject to restrictions resulting from the application of the doctrine of nonassignable duties, the duty of giving directions as to details of the conduct of work not being one for which the employer is regarded as personally responsible. This principle does not, except in a few States, extend to actual superintendents or managers of an employer's business; nor is it vital that such representative shall not be employed in part at actual labor, or that he shall receive a higher salary than his subordinates. No fixed rule is discoverable, but to render the master liable the employee "must be more than a mere foreman to oversee a batch of hands and direct their work under the supervision of the master."(e) Or, as stated in another case, "he must have general power and control over the business, and not mere authority over a certain class of work or a certain gang of men."(f)

SUPERIOR SERVANT DOCTRINE.—While such is the rule in the greater number of American jurisdictions, what is known as the "superior servant doctrine" has been adopted in a number of States. The form of this rule varies in different States, or even in the same court; and there is inconsistency in its application to different cases, resulting from an unwillingness on the part of some courts to carry it out to its logical conclusions, and from an indefiniteness as to the point where it shall cease to control. In the supreme court of Illinois(g) it

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[a] Alaska Treadwell Gold Min. Co. *v.* Whelan (1897), 168 U. S. 86, 18 Sup. Ct. 40.

[b] Vitto *v.* Keogan (1897), 15 App. Div. 329, 44 N. Y. Supp. 1; Lehigh Valley Coal Co. *v.* Jones (1878), 86 Pa. 432; Vilter Mfg. Co. *v.* Otte (1907), 157 Fed. 230 (C. C. A.).

[c] Keenan *v.* New York, L. E. & W. R. Co. (1895), 145 N. Y. 190, 39, N. E. 711.

[d] Chicago & N. W. R. Co. *v.* Bayfield (1877), 37 Mich. 205.

[e] Dobbin *v.* Richmond & D. R. Co. (1879), 81 N. C. 446, 31 Am. Rep. 512.

[f] New York, L. E. & W. R. Co. *v.* Bell (1886), 112 Pa. 400, 4 Atl. 50.

[g] Consol. Coal Co. *v.* Wombacher (1890), 134 Ill. 57, 24 N. E. 627.

was said, "Where the negligent act of one servant causes injury to another as the result of the exercise of the authority conferred upon him by the master over the servant injured, the master is liable." In a Missouri case[a] the following language was used: "Where the master appoints an agent with a superintending control over the work, and with power to employ and discharge hands and direct and control their movements in and about the work, the agent * * * stands in the place of the master." Various grounds are offered for this view, the most satisfactory one being that advanced in an early Ohio case,[b] in which the duty of supervision and control was treated as nondelegable; or, as stated in a Missouri case,[c] "the master, by appointing a foreman or other person to superintend the work, with power to direct the men under him how to do it, thereby devolves upon such person the performance of those duties personal to the master." The power to hire and discharge, while of evidential value, is not, under this doctrine, conclusive either for or against the injured employee, except, perhaps, in the States of North Carolina[d] and Texas,[e] where this test seems to be one of decisive importance. In addition to the States already named, the courts of Kansas,[f] Kentucky,[g] Louisiana,[h] Missouri,[i] Nebraska,[j] Tennessee,[k] and Utah[l] seem to be committed to this doctrine, either formally or in effect.

STATUS OF MANAGER.—It has already been indicated that there are some States in which what may be called the "extreme view" of fellow-service is held, i. e., that even a general manager is a fellow-servant. This may be called the English as opposed to the American view, as it prevails where the rulings of the House of Lords are the precedent; while in by far the greater number of the States of this country there is a recognition of an actual superintendent or general manager as the master's representative, for whose acts the master is accountable. While the cases involving the question of vice-principalship in this form naturally disclose for the most part conditions of

[a] Stephens *v.* Hannibal & St. J. R. Co. (1885), 86 Mo. 221.

[b] Cleveland, C. & C. R. Co. *v.* Keary (1854), 3 Ohio St. 201. (See also Little Miami R. Co. *v.* Stevens (1851), 20 Ohio 415.)

[c] Miller *v.* Missouri P. R. Co. (1892), 109 Mo. 350, 19 S. W. 58.

[d] Bryan *v.* Southern R. Co. (1901), 128 N. C. 387, 38 S. E. 914.

[e] Bering Mfg. Co. *v.* Femelat (1904), 79 S. W. 869.

[f] Walker *v.* Gillett (1898), 59 Kans. 214, 52 Pac. 442.

[g] Southern R. Co. *v.* Barr (1900), 21 Ky. L. Rep. 1615, 55 S. W. 900; but see Cincinnati, N. O. & T. P. R. Co. *v.* Hill's Admr. (1905), 89 S. W. 523.

[h] Faren *v.* Sellers (1887), 39 La. Ann. 1011, 3 So. 363.

[i] Hunt *v.* Desloge Consol. Lead Co. (1904), 79 S. W. 710.

[j] Union P. R. Co. *v.* Doyle (1897), 50 Nebr. 555, 70 N. W. 43.

[k] Louisville & N. R. Co. *v.* Lahr (1888), 86 Tenn. 335, 6 S. W. 663.

[l] Trihay *v.* Brooklyn Lead Min. Co. (1886), 4 Utah 468, 11 Pac. 612.

what may be considered permanent relationship, the same rule has been held to apply to persons occupying the position only temporarily; as, for instance, in the performance of specific undertakings, after the completion of which the representative would assume his customary rank as coemployee with his temporary subordinates. Both the scope and the reason of the rule are in part indicated in the opinion given in a New York case,[a] in which it was held that where the "master withdraws from the management of the business, or the business is of such a nature that it is necessarily committed to agents, as in the case of corporations, the master is liable for the neglects and omissions of duty of the one charged with the selection of the other servants, in employing and selecting such servants, and in the general conduct of the business committed to his care." The States in which a superintendent seems to be considered as a coservant with other employees are Alabama,[b] Massachusetts,[c] Mississippi,[d] and New Jersey,[e] while in California, Indiana, Maine, Maryland, Missouri, New York, and Vermont are to be found cases indicative of a similar view; but from a general view of the decisions in these States it appears that this ruling can not be considered law. In Alabama, Massachusetts, and Mississippi the common-law rule has been modified by legislative enactment.

HEADS OF DEPARTMENTS.—On principle, a court that recognizes the manager of an entire business as the master's representative can not well refuse similar recognition to persons in charge of single branches of an undertaking, as in large industrial undertakings the head of such a branch is completely in control of the men under him, and the management of its affairs is as fully in his hands as if it were an independent business. Thus it has been held by the United States Supreme Court[f] that there is a "clear distinction to be made in their relation to their common principal, between servants of a corporation exercising no supervision over others engaged with them in the same employment, and agents of the corporation clothed with the control and management of a distinct department in which their duty is entirely that of direction and superintendence." The limits of the application of this principle are not clearly marked. The courts making most frequent use of it are the Federal courts, and their position may be considered as fairly presented in the statement that it is only individuals who are in charge of separate branches and depart-

[a] Malone *v.* Hathaway (1876), 64 N. Y. 5, 21 Am. Rep. 573.
[b] Mobile & M. R. Co. *v.* Smith (1877), 59 Ala. 245.
[c] Meehan *v.* Spiers Mfg. Co. (1899), 172 Mass. 375, 52 N. E. 518.
[d] Howd *v.* Mississippi C. R. Co. (1874), 50 Miss. 178.
[e] Curley *v.* Hoff (1899), 62 N. J. L. 758, 42 Atl. 731.
[f] Chicago, M. & St. P. R. Co. *v.* Ross (1884), 112 U. S. 377, 5 Sup. Ct. 184.

ments of service, and have entire and absolute control therein that are properly to be considered, with respect to employees under them, as vice-principals. In the Supreme Court case just quoted from it was held that the conductor of a freight train was such a vice-principal, while in 1893 the same court ruled that the engineer of an engine running alone was not, although by the rules of the company he was in charge with the same authority as a conductor of a train.[a] Later still this court excluded the conductor of a freight train from the operation of this principle,[b] thus reversing the position taken fifteen years before on the facts involved, though not abrogating the rule as to vice-principalship. Such variations of position have added to the perplexities of the situation, not only as to the Federal courts, but as to State courts as well, and to attempt to determine or illustrate the present extent of the application of the doctrine of vice-principalship as tested by rank would be out of place in an undertaking of the present scope.

CHARACTER OF ACT AS TEST.—In cases in which vice-principalship is conceded there is yet a possible distinction as to the kind of acts for which the employer will be held responsible. In the first place it must obviously be a negligent act; and, secondly, it must be within the scope of the agent's authority and be connected with the proper business of his employment. Besides these points, as to which it is only necessary to establish the facts in order to determine their status, the question of the official or nonofficial quality of the acts considered may be raised.

In accordance with this view, a doctrine of dual capacity has been developed, according to which some acts of the employer's representative may be taken as those of a mere servant and not of such a nature as to make the employer responsible for negligence therein. In the courts adopting this doctrine, the negligent performance of the so-called " nondelegable " duties by one who is, by virtue of his rank, conceded to be a vice-principal casts a burden on the employer, while the same person may, as a coservant, perform an act of manual labor negligently, and to the injury of a fellow-workman, without devolving any liability therefor upon the employer. This doctrine of dual capacity seems to have been first applied in Rhode Island,[c] though the leading case is one that was decided in New York in 1880.[d] Other States adopting this theory (though not always without qualification) are Arkansas,[e] Col-

[a] Baltimore & O. R. Co. *v.* Baugh, 149 U. S. 368, 13 Sup. Ct. 914.

[b] New England R. Co. *v.* Conroy (1899), 175 U. S. 323, 20 Sup. Ct. 85.

[c] Mann *v.* Oriental Print Works (1875), 11 R. I. 152.

[d] Crispin *v.* Babbitt, 81 N. Y. 516, 37 Am. Rep. 521.

[e] St. Louis, A. & T. R. Co. *v.* Torrey (1893), 58 Ark. 217 S. W. 244.

orado,[a] Idaho,[b] Illinois,[c] Indiana,[d] Iowa,[e] Massachusetts,[f] Michigan[g] (though in a somewhat earlier case[h] it was said that a superintendent "stands in the place of the master in whatever he does in furtherance of the business and operations he has in charge"), Minnesota,[i] Pennsylvania,[j] Tennessee,[k] Virginia,[l] Washington,[m] and Wisconsin.[n] It has been recognized in the Federal courts also.[o]

On the other hand are to be ranged those courts which do not consider that the character of a vice-principal shifts with the nature of his acts, holding as the better rule that the master is liable for the negligence of his representative whether the negligent act was done by his own hand or by another under his orders.[p] This is apparently the position of the courts of Kansas,[q] Kentucky,[p] Nebraska,[r] North Carolina,[s] and Ohio.[t] Federal cases supporting this view may also be found.[u] In Missouri it was recently declared by the supreme court that the doctrine of dual capacity was fully established in that State,[v] and a number of cases were cited in support of that view, beginning with Harper *v.* Indianapolis and Saint Louis Railway Company (1871) (47 Mo. 567, 4 Am. Rep. 358). But in the case of Hutson *v.* Missouri Pacific Railway Company (1892) (50 Mo. App. 300), it was held that the negligent performance by a section foreman of ordinary labor such as a coservant would engage in, resulting in injury to a workman in his gang, was the negligence of the employer: "There is no just or logical distinction between the act of the vice-principal in negli-

[a] Deep Min. & Drainage Co. *v.* Fitzgerald (1895), 21 Colo. 533, 43 Pac. 210.

[b] Larsen *v.* Le Doux (1905), 11 Idaho 49, 81 Pac. 600.

[c] Chicago & A. R. Co. *v.* May (1883), 108 Ill. 288.

[d] Salem Stone & Lime Co. *v.* Chastain (1894), 9 Ind. App. 453, 36 N. E. 910.

[e] Collingwood *v.* Illinois & I. Fuel Co. (1904), 125 Iowa 537, 101 N. W. 283.

[f] McPhee *v.* New England Structural Co. (1905), 188 Mass. 141, 74 N. E. 303.

[g] Page *v.* Battle Creek Pure Food Co. (1905), 142 Mich. 17, 105 N. W. 72.

[h] Shumway *v.* Walworth & N. Mfg. Co. (1894), 98 Mich. 411, 57 N. W. 251.

[i] Soutar *v.* Minneapolis International Electric Co. (1897), 68 Minn. 18, 70 N. W. 796.

[j] Ricks *v.* Flynn (1900), 196 Pa. 263, 46 Atl. 360.

[k] National Fertilizer Co. *v.* Travis (1899), 102 Tenn. 16, 49 S. W. 832.

[l] Southern R. Co. *v.* Mauzy (1900), 98 Va. 692, 37 S. E. 285.

[m] Sayward *v.* Carlson (1890), 1 Wash. 29, 23 Pac. 830.

[n] Klochinski *v.* Shores Lumber Co. (1896), 93 Wis. 417, 67 N. W. 934.

[o] Reed *v.* Stockmeyer (1896), 74 Fed. 186 (C. C. A.).

[p] Illinois C. R. Co. *v.* Josey's Admx. (1901), 22 Ky. L. Rep. 1795, 61 S. W. 703.

[q] Consol. Kansas City Smelting & Ref. Co. *v.* Peterson (1899), 8 Kan. App. 316, 55 Pac. 673.

[r] Crystal Ice Co. *v.* Sherlock (1893), 37 Nebr. 19, 55 N. W. 294.

[s] Purcell *v.* Southern R. Co. (1896), 119 N. C. 728, 26 S. E. 161.

[t] Berea Stone Co. *v.* Kraft (1877), 31 Ohio St. 287, 27 Am. Rep. 510.

[u] Au *v.* New York, L. E. & W. R. Co. (1886), 29 Fed. 72; Hardy *v.* Minneapolis & St. L. R. Co. (1888), 36 Fed. 657.

[v] Fogarty *v.* St. Louis Transfer Co. (1904), 180 Mo. 490, 79 S. W. 664.

gently ordering a servant to do an imprudent thing and in doing the thing himself."(a) In Texas also decisions in apparent conflict may be found, some(b) denying the dual capacity theory, while a case of the same date(c) supports it. Examples of lack of harmony could be adduced from other States also, and, as appears from the citations given, the rulings of the Federal courts are not uniform.

A Federal judge in a recent case(d) declared that the test of rank used in the Ross case has been largely superseded in the Federal courts by the test of the character of the act, as followed in the Baugh case.(e) "The question is always," says the judge, "whether the negligence charged is the neglect of a primary and absolute duty of the master to the servant. If such be its character, no delegation of the performance of that duty to another, no matter how inferior his rank may be in the master's service, can relieve the liability of the master for its neglect." Some discussion was had in an earlier part of this chapter of these nondelegable duties, from which the employer can be relieved only by their performance. Courts differ in their classification of these duties; but where the character of the act and not the rank of the agent is the test of liability, a person charged with the performance of what is considered a nondelegable duty will be classed in respect of such act as the employer's representative. The attitude of the courts of several States and a somewhat general discussion of the duties of this class are to be found on pages 16 to 19 above, to which reference is suggested in lieu of a repetition of the statements there made. It may be added here, however, that where the negligent act as fellow-servant cooperates with one's negligence as vice-principal in producing an injury, the effect is to charge the employer with liability.(f)

The rule that an employer who purchases appliances from a reputable manufacturer or dealer is not obligated to test or inspect the same is in effect an avoidance of the duty to see that appliances are reasonably safe; this is practically an exception to the general doctrine that such duty is nondelegable, and, as was noted above (page 7), it is not admitted in at least one State, and is modified in the Supreme Court.

The rulings of the courts as to the liability of the employer for the acts of an independent contractor are too contradictory to be summarized. The decisions of a few superior courts are indicated on

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[a] See further Dayharsh *v.* Hannibal & St. J. R. Co. (1891), 103 Mo. 570, 15 S. W. 554, and Russ *v.* Wabash W. R. Co. (1892), 20 S. W. 472.

[b] Sweeny *v.* Gulf, C. & S. F. R. Co. (1892), 84 Tex. 433, 19 S. W. 555; Texas & P. R. Co. *v.* Reed (1895), 32 S. W. 118.

[c] Gulf, C. & S. F. R. Co. *v.* Schwabbe (1892), 21 S. W. 706.

[d] Peters *v.* George (1907), 154 Fed. 634.

[e] See pages 38 and 39, above.

[f] Cody *v.* Longyear (1908), 114 N. W. 735. (Minn.)

page 17, the finding of the employer's liability implying of course that the contractor is regarded as a vice-principal.

As to maintenance of condition, the master's duty has already been indicated in the paragraphs on the subjects of repairs and inspection. It may be noted here that even if conditions of abnormal danger are purely the result of a coservant's negligence, the employer becomes responsible as soon as reasonable care has disclosed or would have disclosed the conditions; also that the knowledge which an inspector or repair man has of dangerous conditions is chargeable to the employer as matter of law.

TESTS NOT MUTUALLY EXCLUSIVE.—It is not to be understood that the different tests of vice-principalship are mutually exclusive in any jurisdiction, or even in any case in which the question arises. The courts may approach the question in either way, or, as frequently happens, expressions are used in a single case which refer some to one and some to the other method of determining the point at issue. The general result of using the test of the character of the act may be said to be favorable to the employee, since under it "an act of the master" may be performed by an employee of whatever rank; though obviously it favors the dual capacity theory, and tends in so far to limit recovery for the acts of a superior.

It is clear that the opportunity for litigation, in connection with the application of the test of the character of the act, lies not so much in the acceptance or rejection of general principles, or of the doctrine of representation as such, for a determination of these points having been once made in a jurisdiction they may be said to be the local law; rather, the numerous accumulated decisions bear mainly on the question of the boundaries between the field covered by the doctrine of nondelegable duties and that covered by the fellow-servant doctrine, or, as otherwise expressed, between "the act of a master and the act of an employee," boundaries which are, as has been said with good reason, "sometimes quite vague and shadowy." Thus it is established that one of the employer's duties is to use due care to furnish and maintain a safe place to work, while a negligent act on the part of an employee may at any moment render a place unsafe for his coemployees. When or at what point liability attaches is a question that comes before the courts to be determined on the merits of the particular facts, and, apart from precedents presenting a practical identity of conditions, the question may be fairly considered an open one. Certain general principles are, of course, settled in any case, but, after all, there remains an undetermined margin on the merits of which the plaintiff grounds his undertaking for a recovery, hoping that in his particular case the scales will turn in his favor, so that instead of conclusive classifications being formed, it appears rather that the volume of litigation relating to this department of the law of employer's liability is steadily growing.

FACTORS MODIFYING THE LIABILITY AND DEFENSES OF EMPLOYERS.

Certain modifying factors may be found to exist in the circumstances of an accident which may affect the rights of the employee and the liability of the employer, but which impinge on so many points that they do not properly fall under any one of the heads above discussed. The most important of these factors will now be briefly presented.

PROMISE TO REPAIR.

In cases where repairs are needed, and the fact is known to the servant, the risk involved in continuing in the service under the conditions of disrepair may be shifted to the employer by his giving a promise to remedy the defective conditions. The effect of the promise is the same whether it is made in response to a complaint by the servant or voluntarily. The fact that a promise was made does not suffice to conclude the investigation, however, whether the question be one of assumed risks or of contributory negligence. It serves only to introduce new facts for consideration.

A mere complaint by an employee or a surmise that the employer's knowledge of conditions will cause him to make the needed changes will not suffice to cast the liability on the master in any different degree from that indicated in the discussion of his duties as to repair. A definite promise relating to the agency that actually occasioned the injury, or such act or expression as would reasonably give rise to an inference of such promise, is necessary. The promise must be made by the employer or his representative, and must be the inducement for the employee's continuance in the situation where the injury occurred.[a]

Though the effect of such a promise is not entirely excluded from consideration in cases where it was given before the beginning of work, the doctrine applies chiefly to cases where it was made subsequent to such beginning. It is then held to rebut the presumption that the employee assumed the risk or that he was guilty of contributory negligence in remaining in a place of known danger, though it does not of itself entitle an injured employee to recovery.

Assumption of risks.

Ordinarily the promise becomes effective as soon as made, but if its fulfillment is set for some indicated period the employer does not become liable under it until the arrival of the time indicated. The special responsibility of the employer continues for a reasonable period only, regard being had for the circumstances of the individual

[a] Bodwell *v.* Nashua Mfg. Co. (1900), 70 N. H. 390, 47 Atl. 613.

case. A complaint by an employee is in effect a declaration that he will no longer continue in service under the conditions of danger, while the promise of the employer, so long as its validity continues, is said to have established a new relation, the employer impliedly agreeing that the employee shall not be held to have assumed the risk.(a)

Contributory negligence.

It follows from the giving of the promise that the question of negligence, which, apart from the promise, would have been decided adversely to the plaintiff as a matter of law, will be submitted to the jury, and that some reason other than mere continuance of work in the position where the injury was received must be presented in order to impute contributory negligence.(b) If, however, the place was one of such open and imminent danger that a prudent man would not risk life or limb by continuing to work therein, the promise to repair is not sufficient to relieve of the charge of negligence a servant so continuing to work.(c)

Local rules.

In a few jurisdictions a tendency to restrict the application of the above principles has been apparent, as in Massachusetts,(d) where a repair hand was excluded from the benefits of a promise, though a mere attendant at a machine would not be; and in Wisconsin, (e) where the doctrine was held to apply to tools and machinery but not to place of work; while in New York(f) it has been held that the promise makes no change in the status of the employee in cases where the instrumentality is a simple one and its construction and defects are as well known to him as to his employer. The supreme court of Maine(g) seems to have taken practically the same view as that held by the courts of New York in a comparatively recent case.

DIRECT ORDERS.

The fact that an employee was acting under direct orders at the time his injury was received is also influential in determining his right to recover where such order had been given. The order must be given by the employer or his representative acting with due authority, though it may reach the employee through an intermediary of equal rank, who is then simply the channel by which it reaches the employee affected. The order must be the cause of the action which resulted in

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[a] Swift & Co. *v.* O'Neill (1900), 187 Ill. 337, 58 N. E. 416.
[b] Hough *v.* Texas & P. R. Co. (1879), 100 U. S. 213, 25 L. Ed. 612.
[c] Texas & N. O. R. Co. *v.* Bingle (1895), 9 Tex. Civ. App. 322, 29 S. W. 674.
[d] Silvia *v.* Wampanoag Mills (1900), 177 Mass. 194, 58 N. E. 590.
[e] Showalter *v.* Fairbanks (1894), 88 Wis. 376, 60 N. W. 257.
[f] Marsh *v.* Chickering (1886), 101 N. Y. 396, 5 N. E. 56.
[g] Conley *v.* Am. Exp. Co. (1895), 87 Me. 352, 32 Atl. 965.

the injury, and it must be of itself negligent under existing circumstances. When these conditions are met, a presumption is raised in the employee's favor, either that he was excusably ignorant of the risks to which his obedience exposed him or that his action was in some degree coerced, so that the employer's customary defenses of assumed risk and of contributory negligence are proportionately, though not absolutely, negatived. If the order does not direct exposure to other than the ordinary, assumed risks, no negligence can be charged to the master in connection therewith. Neither do the courts hold him negligent where he was ignorant, actually and without fault, of the dangers to which a servant would be exposed by obedience. But where the employer knew of the danger and failed to warn the servant, and still more where the servant was both ignorant and incapable, physically and mentally, of safely performing the work directed, the order will be held negligent and the employee will be entitled to recover for resulting injuries.

In connection with a direct order, or in response to some complaint or inquiry of the employee, an employer may give assurances of the employee's safety. This may be in the form of a statement that the work does not involve danger or that the workman will be protected in its performance. Where such an assurance is given by an authorized person, and it is negligently given, so that the employee is thereby induced to do work or to enter a place other than would probably have been the case apart from the assurance, the employee will not be, as a matter of law, chargeable with either an assumption of the risk or with contributory negligence if injury results. This rule is subject to the same qualifications, on grounds of the actual knowledge of the employee and his going into places of obvious danger, as have been set forth in other connections. Yet, inasmuch as the law regards the employer's knowledge of the conditions of the employment as superior to that of the employee, it considers his assurance of safety, especially when accompanied by an order to proceed, to be sufficient warrant for the employee to lay aside his scruples and perhaps to proceed with less vigilance than he would have otherwise exercised.

In Missouri[a] it has been held that an authoritative assurance coupled with an order amounts to a guaranty of safety, though this is not in accord with the general principles controlling in employers' liability cases.

Assumption of risks.

As between the ordinary defenses of the employer, that of assumption of risks is less affected by the giving of direct orders, the general rule being that one who knows and appreciates the danger of a peril-

[a] Stalzer *v.* Jacob Dold Packing Co. (1900), 84 Mo. App. 565.

ous undertaking, even though he engages in it unwillingly and in obedience to the orders of a superior, must bear the risk.(a) If, however, the service involves a departure from the customary line of duty and involves dangers not obvious to a person of ordinary prudence and intelligence, the employee will not be held to have assumed the risk.

Contributory negligence.

The fact of an order is almost conclusive as against the defense of contributory negligence unless the danger was so manifest, glaring, or imminent that a prudent person would refuse to venture upon it. In general the employer will not be heard to declare that the doing of those acts the performance of which he commanded was negligence on the part of the servant who obeyed him therein.(b) Even where the circumstances rendered an alternative disobedience justifiable, the act of obedience may not have been negligent, especially where an emergency prevented deliberation or an apparent duty demanded the performance of the act. As to the point that such an act was coerced rather than voluntary, the courts have not furnished many decisions. If the fact exists, it will be considered, though apart from cases involving minors the compulsion would have to be of an unusual kind to be of decisive weight. In no case will the fact of an order justify a negligent performance of the prescribed undertaking.

SCOPE AND COURSE OF EMPLOYMENT.

The principles controlling the liability of the employer have been considered only in their application to cases where the injury was received by a servant engaged in the duties for which he was specifically or impliedly hired. There is, however, a class of cases in which an injured employee's claim is based on injuries received while he was at a place or in an employment not contemplated in his contract of hiring.

Voluntary act of employee.

If the employee leaves his customary work voluntarily and goes where he has no right to be or undertakes to use machinery which it is not his business to use, he is no better than a trespasser to whom his master owes no duty.(c) Acquiescence by the employer in the conduct of the employee may be construed, however, as extending the scope of employment to the new line of duties, carrying the corresponding mutual obligations. Where the act is for the employer's benefit it

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a Ferren *v.* Old Colony R. Co. (1887), 143 Mass. 197, 9 N. E. 608.

b Hawley *v.* Northern C. R. Co. (1880), 82 N. Y. 370.

c Stagg *v.* Edward Western Tea & Spice Co. (1902), 169 Mo. 489, 69 S. W. 391; Green *v.* Brainerd & N. M. R. Co. (1902), 88 N. W. 974, 85 Minn. 318.

may be decided as a matter of fact that it was reasonably a part of the employee's duty, though in the absence of both command and acquiescence recovery would be, to say the least, doubtful.

Act ordered by employer.

The case is different where there is a specific direction from the employer or other competent person ordering a temporary departure from the contractual lines of duty. The risks incident to the new employment are in a sense extraordinary, as they are outside of the regular line of duty and were not assumed under the contract relative thereto.

The elements necessary to a recovery in case of injury resulting from the undertaking of such work are that the departure from the regular employment should be substantial, that it should be in obedience to the orders of a competent person, and that the order given be negligent.[a] The mere fact that the work was not that for which the employee contracted is not enough, since a command of the employer and obedience without objection by a person of mature years and ordinary capacity present in themselves no conditions of culpability. If, however, the master knew of some unfitness on the part of the servant or of some increased danger in the new situation of which the employee was uninformed, the giving of the order may be considered as negligent. In the absence of grounds on which to support the charge of negligence, workmen will generally be considered as assuming the risk of the new undertaking, in so far as they are known or are of that open and patent character that charges a person of ordinary intelligence with a knowledge of them.[b] Some courts[c] have differed from this view, however, and have in effect made the master giving such an order a guarantor of the safety of the conditions of the new work. The reason given is that the new order carries the employee beyond the contract of hiring, and so also away from his implied undertaking as to assumed risks. In the Adams and the Fort cases, the rule appears to be specially applicable on account of the youth or inexperience of the injured employee whereby he was not readily able to comprehend the risks. This condition does not appear in the Mann and the Lalor cases, however.

Contributory negligence is not ordinarily allowed as a defense to an employer giving orders for a departure from the usual line of serv-

[a] Galveston Oil Co. *v.* Thompson (1890), 76 Tex. 235, 13 S. W. 60.

[b] Felton *v.* Girardy (1900), 43 C. C. A. 439, 104 Fed. 127.

[c] Pittsburgh, C. & St. L. R. Co. *v.* Adams (1886), 105 Ind. 151, 5 N. E. 187, citing Mann *v.* Oriental Print Works (1875), 11 R. I. 152; Union P. R. Co. *v.* Fort (1873), 17 Wall. 554; Lalor *v.* Chicago, B. & Q. R. Co. (1869), 52 Ill. 401, etc.

ice, the reason therefor being practically that given above where the question of obedience to direct orders was discussed, i. e., that a person will not be heard to say that it is negligence to carry out his own orders. One can not, however, enter upon a work involving obvious and extreme risks and claim the employer's protection in so doing, nor can he enter on work for which he knows himself to be essentially unfitted but as to which he makes no protest or objection. Still the presumption that the employer is better informed as to the conditions of the work and the necessary qualifications for doing it properly, and the rule of the customary duty of obedience to a superior, will serve to relieve the employee even in such cases.

Course of employment.

It may occur that an injured person received his injury under circumstances that raise the question whether or not the accident occurred as the result of his employment within its true bounds. Such a question arises, for instance, when an employee is being transported on a vehicle owned or operated by his employer. If the injury was received while he was being transported for the purpose of forwarding the undertaking for which he was engaged, it will be regarded as an incident of his employment, and the rules as to assumption of risks will control.[a] The possible negligence of the employees engaged in operating a train on which a bridge gang is, according to custom, being conveyed to the place of its actual work is such a risk as would ordinarily be contemplated in accepting such employment. The same rule will apply to the negligence of other classes of employees, as track hands, if their negligence would not have furnished ground of action if the injured employee had been actually at work at the time of his injury.

If, however, the employee was traveling entirely for his own purposes, and was not at the time subject to the orders of his employer, the relations of master and servant will be held to be suspended, and the injured person will have the rights of a stranger. In a Pennsylvania case[b] it was held that an employee who received transportation to and from the place of his employment as a part of his compensation was entitled to redress as a passenger in the event of an accident inflicting injury. The same view seems to have been taken by the supreme court of Washington,[c] while in New York[d] this ruling was condemned, and the fact of transportation being considered as part payment for his services was held not to take the case out

[a] Shannon *v.* Union R. Co. (1906), 27 R. I. 475, 63 Atl. 488.
[b] O'Donnell *v.* Allegheny Valley R. Co. (1868), 59 Pa. 239, 98 Am. Dec. 336.
[c] Peterson *v.* Seattle Traction Co. (1901), 23 Wash. 643, 65 Pac. 543.
[d] Vick *v.* New York C. & H. R. R. Co. (1884), 95 N. Y. 267, 47 Am. Rep. 36.

of the rule stated in the paragraph above. The courts of Kentucky,[a] Massachusetts,[b] Pennsylvania,[c] and Tennessee[d] have allowed recovery for injuries received by employees riding on trains or street cars at the close of the day's work or for meals without payment of fare, the view being taken that such transportation was not connected with the performance of their duties, which were at an end for the time, and that they had no connection with the operation of the vehicle on which they rode.

The variety of facts involved in cases presenting the question of course of employment is so great that it would practically require an enumeration of the decisions to present the attitude of the courts thereon. The general rule has been mentioned, i. e., that the employer is not liable for injuries incurred by employees going beyond the scope of their employment.[e] They approximate the condition of volunteers, with whom they are sometimes classed. By the term "volunteers" is meant persons not in the service of the employer prior to their engaging, without authorization, in the employment at which they received the injury complained of, and their situation is in general no better than that of trespassers. They are held to have assumed the limitations of servants without acquiring the right to claim the performance of a master's duties toward them.[f] They will be protected from wanton injuries at the hands of the regular employees, however,[g] and the circumstances may be such that they will be held to warrant a service rendered at the invitation of persons not ordinarily authorized to hire employees so as to give to injured volunteers a right to recover.[h] Or it might be said that the situation of the persons so employed is modified so that they are no longer regarded as volunteers, at least not as trespassers.

The reason for the rule as to volunteers is that no one can be subjected to the obligations of an employer, which are the result of contract, without his consent thereto, either express or implied. This being the case, the situation of a person undertaking to render service, either on his own motion or at the invitation of an unauthorized person, gains nothing from the fact that the danger was not appreciated. This prevents exceptions in behalf of minors, though

[a] Louisville & N. R. Co. *v.* Scott (1900), 22 Ky. L. Rep. 30, 56 S. W. 674.

[b] Dickinson *v.* West End St. R. Co. (1901), 177 Mass. 365, 59 N. E. 60.

[c] McNulty *v.* Pennsylvania R. Co. (1897), 182 Pa. 479, 38 Atl. 524.

[d] Chattanooga Rapid Transit Co. *v.* Venable (1900), 105 Tenn. 460, 58 S. W. 861.

[e] Page 46, supra.

[f] Langan *v.* Tyler (1902), 114 Fed. 716 (C. C. A.).

[g] Kentucky C. R. Co. *v.* Gastineau (1885), 83 Ky. 119; Evarts *v.* St. Paul, M. & M. R. Co. (1894), 56 Minn. 141, 57 N. W. 459.

[h] Bradley *v.* New York C. R. Co. (1875), 62 N. Y. 99; Barstow *v.* Old Colony R. Co. (1887), 143 Mass. 535, 10 N. E. 255.

in some jurisdictions they are not regarded as trespassers when they are too young to be charged with discretion, and thus a greater degree of caution must be exercised in their behalf.

DETAILS OF WORK.

A general limitation of the obligations of the employer is to be found in the rule that he is not bound to supervise the purely operative details of his employees' undertakings. He will not be responsible, therefore, for merely transitory dangers, "existing only on the single occasion when the injury was sustained, and due to no fault of plan or construction, or lack of repair, and to no permanent defect or want of safety in the defendant's works, or in the manner in which they had been ordinarily used."[a] So, also, if the danger arises in the progress of the work and is one of the understood conditions of such progress, no liability attaches to the employer. Acts which are involved in the preparation or care of instrumentalities cast no responsibility upon the employer where such acts are a part of the work of the employees affected. If, however, the person caring for or preparing the agencies is not the one who uses them, the latter person will, according to a large number of cases, have an action for injuries resulting from the negligence of the first-named employee,[b] though mere difference of employment does not imply such right. Other decisions, many of them subsequently overruled, make repair hands fellow-servants with the users of the instrumentalities.

The improper use of suitable instrumentalities, or failure to use those furnished, erroneous choice of methods of work, or improper orders and assignments of subordinates to duty are acts of a superior for which the employer will not in general be held responsible.[c] In the same category are found the giving of signals, the transmission of orders, and the manipulation of instrumentalities (e. g., cars on railway tracks) during the progress of work.[d] The adjustment of temporary structures and appliances used in the course of the work are within the rule of nonliability.

The reverse has been held where the appliance causing the injury was furnished by the employer himself, where there was an implied undertaking that the appliance furnished should be in a completed condition, where the employer failed to furnish suitable material for the preparation of an instrumentality, where the employee did not

[a] Meehan *v.* Spiers Mfg. Co. (1899), 172 Mass. 375, 52 N. E. 518.

[b] Ford *v.* Fitchburg R. Co. (1872), 110 Mass. 240, 14 Am. Rep. 598; Hough *v.* Texas & P. R. Co. (1879), 100 U. S. 213; Gunter *v.* Graniteville Mfg. Co. (1882), 18 S. C. 262, 44 Am. Rep. 573.

[c] Cullen *v.* Norton (1891), 126 N. Y. 1, 26 N. E. 905.

[d] Martin *v.* Atchison, T. & S. F. R. Co. (1897), 166 U. S. 399, 17 Sup. Ct. 603.

have free choice in the selection of materials, and where the danger resulted from conditions which might properly be classed as permanent.

In concluding this review of the common-law phases of the employer's liability it is hardly necessary to recur to the preliminary statements made as to the variant and contradictory interpretations promulgated by the same courts at different times and to the dissimilarity of views held by the courts of different States, since the importance of definite, unifying legislation must be obvious. In considering the statutes enacted on the subject, a considerable influence toward harmonizing the law will be found in the fact that a legislature enacting a statute copied from another State is assumed to take over also the construction and interpretation put upon the statute by the courts of the earlier enacting State prior to its adoption by the legislature of the later one. Apart from this fact, however, the diversities of interpretation of the common law reappear to affect the construction put upon statutes of independent enactment in the various States.

It was generally believed that a long step toward the harmonization of the law relating to the liability of common carriers for injuries to their employees was taken in 1906 in the enactment of a Federal statute applying to interstate commerce generally. This belief was based on the fact that such a statute would supersede all local statutes and rulings where it applied, and also because its construction by the Supreme Court of the United States, in any case that should come before it, would become the authoritative ruling in every jurisdiction on the point involved. By the ruling of the Supreme Court [a] this law was declared not constitutional. What State legislation has accomplished will appear in the main in the following portions of this article.

LIABILITY UNDER STATUTE LAW.

EMPLOYERS' LIABILITY LAWS.

The laws enacted in the United States for the purpose of determining the liability of the employer for injuries to his employees are of two principal classes, one relating in a more or less general and inclusive way to the subject of employment, the other confining itself to specified forms or groups of employment. The laws of both classes are reproduced in the following compilation, following which is a brief discussion of their application and judicial construction.

[a] Nos. 216, 222, October term, 1907. See pages 216–239, below. A bill intended to embody such provisions of this act as could be constitutionally enforced has been introduced, but has not at this date come up for consideration.

SAFETY APPLIANCE AND INSPECTION LAWS.

A body of laws that are related to those here considered prescribes the use of safety appliances on railways and in factories and regulates the operation of mines with a view to the safety of employees. These laws frequently contain a provision that violation of the statute shall entail a special liability upon the employer for injuries occasioned by such violation, or shall affect his defenses in actions for injuries. The violation of laws of this class is construed by the courts of some States only as evidence of negligence,[a] by others as negligence per se.[b] In the latter view, the defense of assumed risks is barred,[c] and the party injured is not bound to show that he was in the exercise of due care to avoid an injury caused by a willful violation.[d] None of these laws can properly be reproduced in the present connection; but their more important provisions, from the standpoint of their effect on the liability of the employer, will be noted.

RIGHT OF ACTION FOR INJURIES CAUSING DEATH.

In almost every jurisdiction in this country laws have been enacted which, while not employers' liability laws in form, have yet gone far to ameliorate the condition of the employee suffering under the hardship of the common-law rule that prohibits recovery of damages in cases where an injured person dies immediately as a consequence of his injury. Though this statute in itself does not affect the usual defenses of the employer in cases of accidental injury, it does give a new right to the heirs or personal representatives of a deceased employee, conferring upon them the same right of action that the injured person would have had had he survived. These laws are generally held to inure to the benefit of nonresident alien beneficiaries.[e] The laws of the various States differ in some minor points, though they are alike modeled after an English act of 1846, known as "Lord Campbell's act." The States are not uniform in their rulings on the question as to whether or not punitive or exemplary damages are recoverable under their acts, but only such rights can be enforced as the statute provides. The amount recoverable is fixed

[a] Pitcher *v.* New York C. & H. R. R. Co. (1891), 127 N. Y. 678, 28 N. E. 136; Jupiter Coal Min. Co. *v.* Mercer (1899), 84 Ill. App. 96.

[b] Colliott *v.* American Mfg. Co. (1897), 71 Mo. App. 163; Lore *v.* Am. Mfg. Co. (1901), 160 Mo. 608, 61 S. W. 678.

[c] Narramore *v.* Cleveland, etc., R. Co. (1899), 96 Fed. 298; United States Cement Co. *v.* Cooper (1907), 82 N. E. 981. (Ind.) (See under Restrictions of employees' right to recover, page 14, above.)

[d] Pawnee Coal Co. *v.* Royce (1900), 184 Ill. 402, 56 N. E. 1090.

[e] Mulhall *v.* Fallon (1900), 176 Mass. 266, 57 N. E. 386; Low Moor Iron Co. *v.* La Bianca's Admr. (1906), 55 S. E. 532, 106 Va. 83.

by the statutes of some States, while others declare in the constitution of the State that the amount shall not be restricted. Persons properly classifiable as beneficiaries must be found to bring the action, the persons so named by the English act being the wife, husband, parent, and child of the deceased person. In a number of States the use of the words "personal representatives" implies a less restricted classification of beneficiaries. Of the same effect is the ruling in a case under the statute of Connecticut on this subject, that the ground of damages is not the loss to the relatives, but the personal injury to the deceased.(a)

Laws governing the liability of employers either contain independent provisions conferring the right of action in cases of death from accidental injury or refer to the State statute providing for such action.

Owing to the fact that these laws are not to be regarded as employers' liability laws, and, further, that they are very similar in their principal features, no reproduction of them will be made beyond a presentation of the law of the District of Columbia (Code of 1901), which will serve as an example of this class of statutes:

SECTION 1301. Whenever by an injury done or happening within the limits of the District of Columbia the death of a person shall be caused by the wrongful act, neglect, or default of any person or corporation, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured, or if the person injured be a married woman, have entitled her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation which would have been liable if death had not ensued shall be liable to an action for damages for such death, notwithstanding the death of the person injured, even though the death shall have been caused under circumstances which constitute a felony; and such damages shall be assessed with reference to the injury resulting from such act, neglect, or default causing such death, to the widow and next of kin of such deceased person: *Provided*, That in no case shall the recovery under this act exceed the sum of ten thousand dollars: *And provided further*, That no action shall be maintained under this chapter in any case when the party injured by such wrongful act, neglect, or default has recovered damages therefor during the life of such party.

SEC. 1302. Every such action shall be brought by and in the name of the personal representative of such deceased person, and within one year after the death of the party injured.

SEC. 1303. The damages recovered in such action shall not be appropriated to the payment of the debts or liabilities of such deceased person, but shall inure to the benefit of his or her family and be distributed according to the provisions of the statute of distribution in force in the said District of Columbia.

(a) McElligott *v.* Randolph (1891), 61 Conn. 157.

Following is a compilation of the various laws in the United States regulating the liability of employers for injuries to employees, arranged alphabetically according to States and Territories:

ALABAMA.

CODE OF 1897.

Liability of employers for injuries to employees.

Injury caused by—

SECTION 1749. When a personal injury is received by a servant or employee in the service or business of the master or employer, the master or employer is liable to answer in damages to such servant or employee, as if he were a stranger, and not engaged in such service or employment, in the cases following:

Defects;

1. When the injury is caused by reason of any defect in the condition of the ways, works, machinery, or plant connected with, or used in the business of the master or employer.

Negligence of superintendent;

2. When the injury is caused by reason of the negligence of any person in the service or employment of the master or employer, who has any superintendence intrusted to him, whilst in the exercise of such superintendence.

Or one in authority;

3. When such injury is caused by reason of the negligence of any person in the service or employment of the master or employer, to whose orders or directions the servant or employee, at the time of the injury, was bound to conform, and did conform, if such injuries resulted from his having so conformed.

Obedience to rules or instructions;

4. When such injury is caused by reason of the act or omission of any person in the service or employment of the master or employer, done or made in obedience to the rules and regulations or by-laws of the master or employer, or in obedience to particular instructions given by any person delegated with the authority of the master or employer in that behalf.

Negligence of person in charge of railroad signal, etc.

5. When such injury is caused by reason of the negligence of any person in the service or employment of the master or employer, who has the charge or control of any signal, points, locomotive, engine, switch, car, or train upon a railway, or of any part of the track of a railway.

Exceptions.

But the master or employer is not liable under this section, if the servant or employee knew of the defect or negligence causing the injury, and failed in a reasonable time to give information thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer, unless he was aware that the master or employer, or such superior already knew of such defect or negligence; nor is the master or employer liable under subdivision 1, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the master or employer, or of some person in the service of the master or employer, and intrusted by him with the duty of seeing that the ways, works, machinery, or plant, were in proper condition.

Damages exempt.

SEC. 1750. Damages recovered by the servant or employee, of and from the master or employer, are not subject to the payment of debts, or any legal liabilities incurred by him.

Injury causing death.

SEC. 1751. If such injury results in the death of the servant or employee, his personal representative is entitled to maintain an action therefor, and the damages recovered are not subject to the payment of debts or liabilities, but shall be distributed according to the statute of distributions.

ARIZONA.

REVISED STATUTES OF 1901.

CIVIL CODE.

Acts of fellow-servants.

Employing corporations liable.

SECTION 2767. Every corporation doing business in the territory of Arizona, shall be liable for all damages done to any employee in consequence of any negligence of its agents or employees to any person sustaining such damage: *Provided*, Such corporation has had previous notice of the incompetency, carelessness or negligence of such agent or employee.

Proviso.

ARKANSAS.

DIGEST OF STATUTES—1904.

Fellow-servants—Railroad companies.

Vice-principals defined.

SECTION 6658. All persons engaged in the service of any railway corporations, foreign or domestic, doing business in this State, who are intrusted by such corporation with the authority of superintendence, control or command of other persons in the employ or service of such corporation, or with the authority to direct any other employee, in the performance of any duty of such employee, are vice-principals of such corporation, and are not fellow-servants with such employee.

Fellow-servants.

SEC. 6659. All persons who are engaged in the common service of such railway corporations, and who, while so engaged, are working together to a common purpose, of same grade, neither of such persons being intrusted by such corporations with any superintendence or control over their fellow-employees, are fellow-servants with each other: *Provided*, Nothing herein contained shall be so construed as to make employees of such corporation in the service of such corporation fellow-servants with other employees of such corporation engaged in any other department or service of such corporation. Employees who do not come within the provisions of this section shall not be considered fellow-servants.

Contracts limiting liability.

SEC. 6660. No contract made between the employer and employee based upon the contingency of the injury or death of the employee limiting the liability of the employer under this act, or fixing damages to be recovered, shall be valid and binding.

ACTS OF 1907.

CHAPTER 69.—*Liability of employers for injuries to employees.*

Injury caused by negligence of—

SECTION 1. All railroad companies operating within this State, whether incorporated or not, and all corporations of every kind and character, and every company whether incorporated or not, engaged in the mining of coal, who may employ agents, servants or employees, such agents, servants or employees being in the exercise of due care, shall be liable to respond in damages for injuries or death sustained by any such agent, employee or servant, resulting from the careless omission of duty or negligence of such employer, or which may result from the carelessness, omission of duty or negligence of any other agent, servant or employee of the said employer, in the same manner and to the same extent as if the carelessness, omission of duty or negligence causing the injury or death was that of the employer.

Employer;

Fellow-servant.

[The law regulating the working of mines provides that a right of action for direct damages shall accrue to any party injured, or to his heirs if the injury results in death, where the injury is occasioned by a willful violation of the statute, or a willful failure to comply with its provisions. Dig. Stat., section 5350, amended by acts of 1905, chapter 225.]

CALIFORNIA.

DEERING'S CODES AND STATUTES, 1885.

CIVIL CODE.

Liability of employers for injuries to employees.

Ordinary risks. SECTION 1970 (as amended by chapter 97, Acts of 1907). An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the negligence causing the injury was committed in the performance of a duty the employer owes by law to the employee, or unless the employer has neglected to use ordinary care in the selection of the culpable employee:

Superior servants. *Provided, nevertheless,* That the employer shall be liable for such injury when the same results from the wrongful act, neglect or default of any agent or officer of such employer, superior to the employee injured, or of a person employed by such employer having the right to control or direct the services of such employee injured, and also when such injury results from the wrongful act,

Other departments, etc. neglect or default of a coemployee engaged in another department of labor from that of the employee injured, or employed upon a machine, railroad train, switch signal point, locomotive engine, or other appliance than that upon which the employee [who] is injured is employed, or who is charged with dispatching trains, or transmitting telegraphic or telephonic orders upon any railroad, or in the operation of any mine, factory, machine shop, or other industrial establishment.

Knowledge. Knowledge by an employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of such employer shall not be a bar to recovery for any injury or death caused thereby, unless it shall also appear that such employee fully understood, comprehended and appreciated the dangers incident to the use of such defective machinery, ways, appliances or structures, and thereafter consented to use the same, or continued in the use thereof.

Injuries causing death. When death, whether instantaneous or otherwise, results from an injury to an employee received as aforesaid, the personal representative of such employee shall have a right of action therefor against such employer, and may recover damages in respect thereof, for and on behalf, and for the benefit of the widow, children, dependent parents, and dependent brothers and sisters, in order of precedence as herein stated, but no more than one action shall be brought for such recovery.

Waivers. Any contract or agreement, express or implied, made by any such employee to waive the benefits of this section, or any part thereof, shall be null and void, and this section shall not be construed to deprive any such employee or his personal representative, of any right or remedy to which he is now entitled under the laws of this State.

Contributory negligence. The rules and principles of law as to contributory negligence which apply to other cases shall apply to cases arising under this section, except in so far as the same are herein modified or changed.

SEC. 1971. An employer must in all cases indemnify his employees for losses caused by the former's want of ordinary care.

[Various acts regulating the working of mines provide that violation thereof or willful failure to comply therewith renders persons so offending liable to all damages resulting because of such violation or failure. Acts of March 13, 1872; act of March 27, 1874; acts of 1893, chapter 74.]

COLORADO.

CONSTITUTION.

ARTICLE 15.—*Contracts of employees waiving right to damages.*

Contracts waiving right to damages.

SECTION 15. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation by reason of the negligence of such person, company or corporation, or the agents or employees thereof, and such contracts shall be absolutely null and void.

MILLS' ANNOTATED STATUTES OF 1891 AND SUPPLEMENT OF 1904.

Liability of employers for injuries to employees.

Injury caused by—

SECTION 1511a. Where, after the passage of this act, personal injury is caused to an employee, who is himself in the exercise of due care and diligence at the time;

Defects;

(1) By reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from or had not been discovered or remedied owing to the negligence of the employer, or of any person in the service of the employer, and intrusted by him with the duty of seeing that the ways, works and machinery were in proper condition; or

Negligence of superintendent;

(2) By reason of the negligence of any person in the service of the employer, intrusted with or exercising superintendence whose sole or principal duty is that of superintendence;

Of person in charge of railroad signal, etc.

(3) By reason of the negligence of any person in the service of the employer who has the charge or control of any switch, signal, locomotive engine or train upon a railroad, the employee, or in case the injury results in death the parties entitled by law to sue and recover for such damages shall have the same right of compensation and remedy against the employer, as if the employee had not been an employee of or in the service of the employer or engaged in his or its work.

Damages.

SEC. 1511b. The amount of compensation recoverable under this act, in case of a personal injury resulting solely from the negligence of a coemployee, shall not exceed the sum of five thousand dollars. No action for the recovery of compensation for injury or death under this act shall be maintained unless written notice of the time, place and cause of the injury is given to the employer within sixty days, and the action is commenced within two years from the occurrence of the accident causing the injury or death. But no notice given under the provisions of this section shall be deemed invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of injury: *Provided*, It is shown that there was no intention to mislead, and that the party entitled to notice was not in fact misled thereby.

Notice.

Limitation.

Contractors' employees.

SEC. 1511c. Whenever an employee enters into a contract, either written or verbal, with an independent contractor, to do part of such employer's work, or whenever such contractor enters into a contract with a subcontractor to do all or a part of the work comprised in such contract or contracts with the employer, such contract or subcontract shall not bar the liability of the employer for injuries to the employees of such contractor or subcontractor, by reason of any defect in the condition of the ways, works, machinery or plant, if they are the property of the employer or furnished by him, and if such defect arose or had not been discovered or remedied through the negligence of the employer or of some person intrusted by him with the duty of seeing that they were in proper condition.

Knowledge of defect.

SEC. 1511d. An employee or those entitled by law to sue and recover, under the provisions of this act, shall not be entitled under this act to any right of compensation or remedy against his employer in any case where such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give or cause to be given information thereof to the employer or to some person superior to himself in the service of his employer, who had intrusted to him some general superintendence.

Liability of fellow-servant.

SEC. 1511e. If the injury sustained by the employee is clearly the result of the negligence, carelessness or misconduct of a coemployee the coemployee shall be equally liable under the provisions of this act, with the employer, and may be made a party defendant in all actions brought to recover damages for such injury. Upon the trial of such action, the court may submit to and require the jury to find a special verdict upon the question as to whether the employer or his vice-principal was or was not guilty of negligence proximately causing the injury complained of; or whether such injury resulted solely from the negligence of the coemployee, and in case the jury by their special verdict find that the injury was solely the result of the negligence of the employer or vice-principal, then and in that case the jury shall assess the full amount of plaintiff's damages against the employer, and the suit shall be dismissed as against the employee; but in case the jury by their special verdict find that the injury resulted solely from the negligence of the coemployee, the jury may assess damages both against the employer and employee.

Acts of fellow-servants.

SEC. 1511f. Every corporation, company or individual who may employ agents, servants or employees, such agents, servants or employees being in the exercise of due care, shall be liable to respond in damages for injuries or death sustained by any such agent, employee or servant, resulting from the carelessness, omission of duty or negligence of such employer, or which may have resulted from the carelessness, omission of duty or negligence of any other agent, servant or employee of the said employer, in the same manner and to the same extent as if the carelessness, omission of duty or negligence causing the injury or death was that of the employer.

Law construed.

SEC. 1511g. All acts and parts of acts in conflict herewith are hereby repealed: *Provided, however*, That this act shall not be construed to repeal or change the existing laws relating to the right of the person injured, or in case of death, the right of the husband or wife, or other relatives of a deceased person, to maintain an action against the employer.

[The law regulating the working of mines provides for a right of action for direct damages against persons violating or willfully failing to comply with said law, where such violation or failure results in injury. When death ensues, the widow or lineal heirs may sue. Section 3192.

An act requiring railroad switch rails to be blocked makes a failure to do so prima facie evidence of negligence where employees or others are injured as a result of such failure. Section 3751e.]

CONNECTICUT.

GENERAL STATUTES OF 1902.

Duties of employers.

Safe place, appliances, etc.

SECTION 4702. It shall be the duty of the master to exercise reasonable care to provide for his servant a reasonably safe place in which to work, reasonably safe appliances and instrumentalities for his work, and fit and competent persons as his colaborers; to exercise reasonable care in the appointment or designation of a vice-principal, and to appoint as such vice-principal a fit and competent person. The default of a vice-principal in the performance of any duty imposed by law on the master shall be the default of the master.

DELAWARE.

[An act requiring air brakes to be used on passenger trains makes violators thereof liable in damages for injuries resulting from their violation. Acts of 1903, chapter 394.]

FLORIDA.

GENERAL STATUTES OF 1906.

Liability of railroad companies for injuries to employees.

SECTION 3148. A railroad company shall be liable for any damage done to persons, stock or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employ and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company. Damage caused by operation of cars, etc.

SEC. 3149. No person shall recover damages from a railroad company for injury to himself or his property, where the same is done by his consent, or is caused by his own negligence. If the complainant and the agents of the company are both at fault, the former may recover, but the damages shall be diminished or increased by the jury in proportion to the amount of default attributable to him. Negligence. Comparative negligence.

SEC. 3150. If any person is injured by a railroad company by the running of the locomotives or cars, or other machinery of such company, he being at the time of such injury an employee of the company, and the damage was caused by negligence of another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no bar to a recovery. No contract which restricts such liability shall be legal or binding. Negligence of fellow-servants. Contracts.

GEORGIA.

CODE OF 1895.

Liability of railroad companies for injuries to employees.

SECTION 2297. Railroad companies are common carriers, and liable as such. As such companies necessarily have many employees who can not possibly control those who should exercise care and diligence in the running of trains, such companies shall be liable to such employees as to passengers for injuries arising from the want of such care and diligence. Measure of liability.

SEC. 2321. A railroad company shall be liable for any damage done to persons, stock or other property, by the running of the locomotives, or cars, or other machinery of such company, or for damage done by any person in the employment and service of such company, unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company. Damages arising from operation of cars, etc.

SEC. 2322. No person shall recover damage from a railroad company for injury to himself or his property, where the same is done by his consent, or is caused by his own negligence. If the complainant and the agents of the company are both at fault, the former may recover, but the damages shall be diminished by the jury in proportion to the amount of default attributable to him. Negligence. Comparative negligence.

SEC. 2323. If the person injured is himself an employee of the company, and the damage was caused by another employee, and without fault or negligence on the part of the person injured, his employment by the company shall be no bar to his recovery. Negligence of fellow-servants.

SEC. 2324 (as amended by act No. 102, page 63, Acts of 1896). The liability of receivers, trustees, assignees, and other like officers Measure of liability of receivers.

operating railroads in this State, or partially in this State, for injuries and damages to persons in their employ, caused by the negligence of coemployees, or for injuries or damages to personal property, shall be the same as the liability now fixed by law governing the operation of railroad corporations in this State for like injuries and damages, and a lien is hereby created on the gross income of any such railroad while in the hands of any such receiver, trustee, or assignee, or other persons in favor of such injured employees or plaintiff, superior to all other liens against defendant under the laws of this State.

Liability of employers for injuries to employees.

Negligence of fellow-servants.

SECTION 2610. Except in case of railroad companies, the master is not liable to one servant for injuries arising from the negligence or misconduct of other servants about the same business.

Duty of employer.

SEC. 2611. The master is bound to exercise ordinary care in the selection of servants, and not to retain them after knowledge of incompetency; he must use like care in furnishing machinery equal in kind to that in general use, and reasonably safe for all persons who operate it with ordinary care and diligence. If there are latent defects in machinery, or dangers incident to an employment unknown to the servant, of which the master knows, or ought to know, he must give the servant warning in respect thereto.

Assumption of risk.

SEC. 2612. A servant assumes the ordinary risks of his employment, and is bound to exercise his own skill and diligence to protect himself. In suits for injuries arising from the negligence of the master in failing to comply with the duties imposed by the preceding section, it must appear that the master knew or ought to have known of the incompetency of the other servant, or of the defects or danger in the machinery supplied; and it must also appear that the servant injured did not know and had not equal means of knowing such fact, and by the exercise of ordinary care could not have known thereof.

Contracts waiving liability.

SEC. 2613. All contracts between master and servant, made in consideration of employment, whereby the master is exempted from liability to the servant arising from the negligence of the master or his servants, as such liability is now fixed by law, shall be null and void, as against public policy.

Negligence of fellow-servants.

SEC. 3030. The principal is not liable to one agent for injuries arising from the negligence or misconduct of other agents about the same business; the exception in case of railroads has been previously stated.

Degree of care.

SEC. 3830. If the plaintiff by ordinary care could have avoided the consequences to himself caused by the defendant's negligence, he is not entitled to recover. But in other cases the defendant is not relieved, although the plaintiff may in some way have contributed to the injury sustained.

ILLINOIS.

[An act requiring threshing machines, cornshellers, or any other machine driven by horsepower, to have the tumbling-rods or shafting boxed, makes the owner who fails to comply with the terms of the act liable in damages for injuries occasioned by such noncompliance. Annotated Statutes of 1896, chapter 70, section 4.

So also of the act regulating the working of coal mines. Acts of 1899, act, page 300, section 33.

The railroad safety appliance law of 1905 takes away the defenses of assumed risks and of contributory negligence where an employee is injured because of the company's noncompliance with the law, though the employee knew of it. Acts of 1905, act, page 350, section 9.]

INDIANA.

ANNOTATED STATUTES OF 1894—REVISION OF 1901.

Liability of employers for injuries to employees—Contributory negligence to be matter of defense only.

SECTION 359a. Hereafter in all actions for damages brought on account of the alleged negligence of any person, copartnership or corporation for causing personal injuries, or the death of any person, it shall not be necessary for the plaintiff in such action to allege or prove the want of contributory negligence on the part of the plaintiff, or on the part of the person for whose injury or death the action may be brought. Contributory negligence, on the part of the plaintiff, or such other person, shall be a matter of defense, and such defense may be proved under the answer of general denial: * * * Actions for injuries, etc. Contributory negligence.

Contracts of employees waiving right to damages.

SECTION 7082a. All contracts between employer and employee releasing the employer from liability for damages arising out of the negligence of the employer by which the employee is injured, or in case of the employee's death to his representatives, are against public policy, and hereby declared null and void. Contracts void.

SEC. 7082b. All contracts between employer and employee releasing third persons, copartnerships or corporations from liability for damages arising out of the negligence of such third persons, copartnerships or corporations by which the employee of such employer is injured, or in case of the death of such employee, to his representatives, are against public policy and are hereby declared null and void. Third persons.

SEC. 7082c. All contracts between an employee and a third person, copartnership or corporation in which it is agreed that the employer of such employee shall be released from liability for damages of such employee arising out of the negligence of the employer, or in case of the death of such employee, to his representatives, are against public policy and are hereby declared null and void: *Provided*, That nothing in this act shall apply to voluntary relief departments, or associations organized for the purpose of insuring employees. Nothing in this act shall be construed to revert back to contracts made prior to the passage of this act. Nor shall this act affect pending litigation: *Provided*, That nothing in any section of this act shall be so construed as to affect or apply to any contract or agreement that may be made between the employer and employee, or in case of death, his next of kin or his representative after an injury to the employee has occurred, but the provisions of this act shall apply solely to contracts made prior to any injury. Contracts releasing from liability. Insurance. Contracts made after injury.

Liability of railroad companies, etc., for injuries to employees.

SECTION 7083. Every railroad or other corporation, except municipal, operating in this State, shall be liable for damages for personal injury suffered by any employee while in its service, the employee so injured being in the exercise of due care and diligence, in the following cases: Injury caused by—

First. When such injury is suffered by reason of any defect in the condition of ways, works, plant, tools and machinery connected with or in use in the business of such corporation, when such defect was the result of negligence on the part of the corporation, or some person intrusted by it with the duty of keeping such way, works, plant, tools or machinery in proper condition. Defects;

Second. Where such injury resulted from the negligence of any person in the service of such corporation, to whose order or direction the injured employee at the time of the injury was bound to conform, and did conform. Negligence of one in authority;

Obedience to rules; *Third.* Where such injury resulted from the act or omission of any person done or made in obedience to any rule, regulation or by-law of such corporation, or in obedience to the particular instructions given by any person delegated with the authority of the corporation in that behalf.

Negligence of person in charge of railroad signal, etc. *Fourth.* Where such injury was caused by the negligence of any person in the service of such corporation who has charge of any signal, telegraph office, switch yard, shop, roundhouse, locomotive engine or train upon a railway, or where such injury was caused by the negligence of any person, coemployee or fellow-servant engaged in the same common service in any of the several departments of the service of any such corporation, the said person, coemployee or fellow-servant, at the time acting in the place, and performing the duty of the corporation in that behalf, and the person so injured, obeying or conforming to the order of some superior at the time of such injury, having authority to direct; but nothing herein shall be construed to abridge the liability of the corporation under existing laws.

Measure of damages. SEC. 7085. The damages recoverable under this act, shall be commensurate with the injury sustained unless death results from such injury, when, in such case, the action shall survive and be governed in all respects by the law now in force as to such actions: *Provided*, That where any such person recovers a judgment against a railroad or other corporation, and such corporation takes an appeal, and, pending such appeal, the injured person dies, and the judgment rendered in the court below be thereafter reversed, the right of action of such person shall survive to his legal representative.

Contracts waiving rights. SEC. 7087. All contracts made by railroads or other corporations with their employees, or rules or regulations adopted by any corporation releasing or relieving it from liability to any employee having a right of action under the provisions of this act are hereby declared null and void. The provisions of this act however shall not apply to any injuries sustained before it takes effect, nor shall it affect in any manner any suit or legal proceedings pending at the time it takes effect.

[A provision of the act requiring steam railroads to be equipped with switch lights makes a company violating or failing to comply with the law liable to all persons and employees injured by reason of noncompliance, and takes away the defense of assumption of risk. Section 5173c.

A similar provision appears in a statute directing the equipment of railroad locomotives with engine brakes, the use of automatic couplers, and the placing of grab irons on cars. Acts of 1903, chapter 120.

So also of the safety appliance law of 1907. Acts of 1907, chapter 118; and the act regulating hours of labor of railroad employees. Acts of 1907, chapter 131.

The statute requiring fire escapes to be placed on factories, etc., makes owners who fail to comply with its terms liable in damages for the personal injury or death of any person occasioned by fire in a building not provided with fire escapes. Acts of 1903, chapter 222.

The statute regulating the working of coal mines gives a right of action against the operator of a mine for injuries occasioned by any violation of the act, or willful failure to comply with its provisions. Acts of 1905, chapter 50.]

IOWA.

CODE OF 1897 AND SUPPLEMENT OF 1902.

Liability of railroad companies for injuries to employees.

Injuries caused by negligence. SECTION 2071. Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of the agents, or by any mismanagement of the engineers or other em-

ployees thereof, and in consequence of the willful wrongs, whether of commission or omission, of such agents, engineers or other employees, when such wrongs are in any manner connected with the use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding.

Contracts restricting liability.

Nor shall any contract of insurance, relief, benefit, or indemnity in case of injury or death, entered into prior to the injury, between the person so injured and such corporation, or any other person or association acting for such corporation, nor shall the acceptance of any such insurance, relief, benefit, or indemnity by the person injured, his widow, heirs, or legal representatives after the injury, from such corporation, person, or association, constitute any bar or defense to any cause of action brought under the provisions of this section, but nothing contained herein shall be construed to prevent or invalidate any settlement for damages between the parties subsequent to injuries received.

Contracts of insurance, etc.

[The statute directing the use of power brakes and automatic couplers on railroad trains abrogates the defense of assumed risks in cases of injury to employees occasioned by failure to comply with the law. Section 2083.

Failure to conform with the requirements of the law regulating the working of mines is declared to be culpable negligence in cases of injury resulting therefrom. Section 2492.]

ACTS OF 1907.

CHAPTER 181.—*Liability of employers for injuries to employees—Assumption of risk.*

SECTION 1. In all cases where the property, works, machinery or appliances of an employer are defective or out of repair and the employee has knowledge thereof, and has given written notice to the employer, or to any person authorized to receive and accept such notice, or to any person in the service of the employer and intrusted by him with the duty of seeing that the property, works, machinery or appliances are in proper condition, of the particular defect or want of repair or when the employer or such other person has been notified in writing of such defect or want of repair by any person whose duty it is under the rules of the employer or the laws of the State to inspect such works, machinery or appliances, or any person who is subject to the risk incident to such defect or want of repair; no employee after such notice, shall by reason of remaining in the employment with such knowledge, be deemed to have assumed the risk incident to the danger arising from such defect or want of repair.

Notice by employee.

Risk not assumed.

KANSAS.

GENERAL STATUTES OF 1901.

Liability of railroad companies for injuries to employees.

SECTION 5858 (as amended by chapter 281, Acts of 1907). 1. Every railroad company organized or doing business in the State of Kansas shall be liable for all damages done to any employee of said company in consequence of any negligence of its agents, or by any mismanagement of its engineers or other employees, to any person sustaining such damage: *Provided*, That notice in writing that an injury has been sustained, stating the time and place thereof, shall have been given by or on behalf of the person injured to such railroad company within eight months after the occurrence of the injury: *Provided, however*, That where an action is commenced by the injured person within said eight months, it shall not be necessary to give said notice: *And provided further*, That where any person injured is in the hospital of or under the charge

Negligence of agents and employees.

of the railroad company causing the injury, or is prevented by the effects of said injury, the said eight months shall not begin to run until such injured person is discharged from said hospital or care of said railroad company or until such disability be removed: *Provided further*, That in case said injured person shall die, as a result of said injuries, within said eight months, it shall not be necessary to give said notice: *Provided further*, That said notice need not state whether or not suit is intended to be brought.

Service of notice.

2. The service mentioned in section 1 hereof may be served by a written copy thereof, by the person injured or any one on his behalf, upon any person designated by the railroad in any county in which the action might be brought, as provided in section 4499 of the General Statutes of Kansas of 1901, or if no such person has been designated or appointed, as in said section provided, then upon any local superintendent of affairs, freight agent, agent to sell tickets or station keeper of such company or corporation in such county, or such service may be made by leaving a copy thereof at any depot or station of such company or corporation in such county, with the person in charge thereof or in the employ of such company or corporation, and such service shall be held and deemed complete and effectual. Proof of such service shall be made by the affidavit of the party making the same, or other persons knowing the facts.

[The statute requiring the installation of fire escapes on factories, and of safety devices in manufacturing establishments, authorizes an action for injuries or death resulting from disregard by the employer of the provisions of the act. Acts of 1903, chapter 356.]

KENTUCKY.

[An act regulating the construction of railroad bridges and tunnels, and directing the use of air brakes on railroad trains and the blocking of frogs at switches, makes the company liable for injuries resulting from a failure or neglect to comply with the provisions of the law. Statutes of 1903, section 793.]

LOUISIANA.

REVISED CIVIL CODE—EDITION OF 1887.

Liability of employers for injuries to employees.

Negligence.

ARTICLE 2316. Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill.

Acts of employees, etc.

ART. 2317. We are responsible, not only for the damage occasioned by our own act, but for that which is caused by the act of persons for whom we are answerable, or of the things which we have in our custody. * * *

Liability of employers.

ART. 2320. Masters and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed.

Teachers and artisans are answerable for the damage caused by their scholars or apprentices, while under their superintendence.

In the above cases, responsibility only attaches, when the masters or employers, teachers and artisans, might have prevented the act which caused the damages, and have not done it.

MARYLAND.

PUBLIC LOCAL LAWS—CODE OF 1888.

ARTICLE 1.—*Liability of operators, etc., of mines for injuries to employees.*

Law applies to whom.

SECTION 195a (added by chapter 412, Acts of 1902). Any corporation, partnership, association, individual, individuals, engaged in the business of owning or conducting any coal mines, clay

mines in Allegany or Garrett counties, whether such owner or owners, operator or operators be residents of the State of Maryland or not, employing persons in the operation of mining coal or clay, shall be liable in law to any employee engaged in such occupation or to his legal representatives, in case of death, for the damage arising and flowing from any injury received by said employee through the negligence of said owner or operator or from the negligence of any agent or agents, employee or employees, and if the negligence causing such injury be found to consist of the joint or collective negligence of both the employer, his agent or agents, employee or employees, on the one hand, and of the negligence of the injured employee on the other hand, then it shall be the duty of the jury, or of the court sitting as a jury, to determine and ascertain as near as may be the proportion of such negligence of which each has been guilty, and having ascertained and determined such proportions of negligence causing the injury, it shall be the duty of the jury, or of the court sitting as a jury, to apportion the damages arising from said injury in like proportion or degree and award to the plaintiff or plaintiffs the proportion of damages suffered which it shall have been determined was the proportion of the defendant or defendants' negligence contributing to the injury complained of.

Who may claim benefit.

Negligence.

Comparative negligence.

[The statute regulating the operators of mines in Allegany and Garrett counties makes owners or operators who fail to comply therewith liable in damages for injury or death occasioned by such failure. Article 1 (revision of 1902), section 209n.]

MASSACHUSETTS.

REVISED LAWS OF 1902.

CHAPTER 106.—*Contracts of employees waiving right to damages.*

SECTION 16. No person shall, by a special contract with his employees, exempt himself from liability which he may be under to them for injuries suffered by them in their employment and resulting from the negligence of the employer or of a person in his employ.

Contracts forbidden.

CHAPTER 106.—*Liability of employers for injuries to employees.*

SECTION 71. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care, by reason of:

Injury caused by—

First, A defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been intrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or,

Defects;

Second, The negligence of a person in the service of the employer who was intrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or, in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer; or,

Negligence of superintendent;

Third, The negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine or train upon a railroad;

Person in charge of railroad signal, etc.

The employee, or his legal representatives, shall, subject to the provisions of the eight following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

Status of employee.

A car which is in use by, or which is in possession of, a railroad corporation shall be considered as a part of the ways, works or machinery of the corporation which uses or has it in possession, within the meaning of clause one of this section, whether it is owned by such corporation or by some other company or person.

Definitions.

One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of clause three of this section, and whoever, as a part of his duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine or train within the meaning of said clause.

Action for injury and death.

SEC. 72 (as amended by chapter 370, Acts of 1906). If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury; and in the same action under a separate count at common law, may recover damages for conscious suffering resulting from the same injury.

Action for death.

SEC. 73. If, as the result of negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section seventy-one, an employee is instantly killed, or dies without conscious suffering, his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support, shall have a right of action for damages against the employer.

Degree of negligence considered.

SEC. 74. If, under the provisions of either of the two preceding sections, damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

Limit of damages.

The amount of damages which may be awarded in an action under the provisions of section seventy-one for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section seventy-two, shall not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section seventy-two, shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section seventy-three, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section seventy-three shall not be less than five hundred nor more than five thousand dollars.

Notice.

Limitation.

SEC. 75. No action for the recovery of damages for injury or death under the provisions of sections seventy-one to seventy-four, inclusive, shall be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days, and the action is commenced within one year, after the accident which caused the injury or death. Such notice shall be in writing, signed by the person injured or by a person in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within sixty days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by reason of an inaccuracy in stating the time, place or cause of the injury, if it is shown that there was no intention to mislead, and that the employer was not in fact misled thereby. The provisions of section twenty-two of chapter fifty-one shall apply to notices under the provisions of this section.

Employees of contractors and subcontractors.

SEC. 76. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for injuries to the employees of such contractor or subcontractor, caused by any defect in the condition of the ways, works, machinery or plant, if they are the property of the employer or are furnished by him and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person intrusted by him with the duty of seeing that they were in proper condition.

Employee can not recover, when.

SEC. 77. An employee or his legal representatives shall not be entitled under the provisions of sections seventy-one to seventy-four, inclusive, to any right of action for damages against his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was intrusted with general superintendence.

Employer contributing to insurance fund.

SEC. 78. An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under the provisions of sections seventy-one to seventy-four, inclusive, or to any relief society formed under the provisions of sections seventeen, eighteen and nineteen of chapter one hundred and twenty-five, may prove in mitigation of the damages recoverable by an employee under the provisions of said sections, such proportion of the pecuniary benefit which has been received by such employee from any such fund or society on account of such contribution of said employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

Exemptions.

SEC. 79. The provisions of the eight preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow-employees.

[The law regulating the construction of buildings to be used as factories, etc., and their equipment with fire escapes and fire extinguishers, makes negligent owners, lessees, or occupants liable to any person injured for all damages caused by violation of its provisions. Chapter 104, section 50.

The act directing the installation and use of safety appliances on railroads takes away from the negligent company the defense of assumed risks in cases of injury resulting from violations of the act, even though the injured employee knew of the violation. Chapter 111, section 209.]

MINNESOTA.

REVISED LAWS—1905.

Liability of railroad companies for injuries to employees.

Acts of fellow-servants.

SECTION 2042. Every company owning or operating, as a common carrier or otherwise, a railroad, shall be liable for all damages sustained within this State by any agent or servant thereof, without contributory negligence on his part, by reason of the negligence of any other servant thereof, and no contract, nor any rule or regulation of such company, shall impair or limit such liability. But this section shall not be so construed as to render any railroad company liable for damages sustained by any such agent or servant while engaged in the construction of a new road, or any part thereof, not open to public travel or use.

MISSISSIPPI.

CONSTITUTION.

ARTICLE 7.—*Liability of railroad companies for injuries to employees.*

Negligence of superiors; SECTION 193. Every employee of any railroad corporation shall have the same right and remedies for any injuries suffered by him from the act or omission of said corporation or its employees, as are allowed by law to other persons not employees, where the injury results from the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured, and also when the injury results

Of fellow-servants. from the negligence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work. Knowledge by any employee injured, of the defective or unsafe character or condition of any machinery, ways, or appliances, shall be no defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars, or engines voluntarily operated by them.

Death. Where death ensues from any injury to employees, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives

Contracts waiving benefits. of other persons. Any contract or agreement, express or implied, made by any employee to waive the benefit of this section shall be null and void; and this section shall not be construed to deprive any employee of a corporation or his legal or personal representative, of any right or remedy that he now has by the law of the land. The legislature may extend the remedies herein provided for to any other class of employees.

CODE OF 1906.

Liability of railroad companies for injuries to employees.

Evidence. SECTION 1985. In all actions against railroad companies for damages done to persons or property, proof of injury inflicted by the running of the locomotives or cars of such company shall be prima facie evidence of the want of reasonable skill and care on the part of the servants of the company in reference to such injury. This section shall also apply to passengers and employees of railroad companies.

Acts of superiors; SEC. 4056. Every employee of a railroad corporation shall have the same rights and remedies for an injury suffered by him from the act or omission of the corporation or its employees as are allowed by law to other persons not employees, where the injury results from the negligence of a superior agent or officer, or of a person having the right to control or direct the services of the party injured, and also when the injury results from the negli-

Of fellow-servants. gence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work. Knowledge by an employee injured of the defective or unsafe character or condition of any machinery, ways, or appliances, or of the improper loading of cars, shall not be a defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them.

Death. When death ensues from an injury to an employee an action may be brought in the name of the widow of such employee for the death of the husband, or by the husband for the death of his wife, or by [for] the death of a child, or in the name of the child for the death of an only parent, for such damages as may be suffered by them respectively by reason of such death, the damages to be for the use of such widow, husband, or child, ex-

cept that in case the widow should have children, the damages shall be distributed as personal property of the husband. The legal or personal representative of the person injured shall have the same rights and remedies as are allowed by law to such representatives of other persons. In every such action the jury may give such damages as shall be fair and just, with reference to the injury resulting from such death to the person suing. Any contract or agreement, expressed or implied, made by an employee to waive the benefit of this section shall be null and void; and this section shall not deprive an employee of a person, natural or artificial, or the legal or personal representatives of such person, of any right or remedy they now have by law. Waiver.

[A statute that requires telltales or warning strings to be placed over railroad tracks at approaches to overhead bridges or other overhanging objects makes negligent companies liable for the injury or death of a person caused by striking such bridge, etc., even though the person so killed or injured was guilty of contributory negligence. Section 4051.]

MISSOURI.

REVISED STATUTES OF 1899.

Liability of railroad companies for injuries to employees.

SECTION 2873. Every railroad corporation owning or operating a railroad in this State shall be liable for all damages sustained by any agent or servant thereof while engaged in the work of operating such railroad by reason of the negligence of any other agent or servant thereof: *Provided*, That it may be shown in defense that the person injured was guilty of negligence contributing as a proximate cause to produce the injury. Negligence of fellow-servants.

SEC. 2874. All persons engaged in the service of any such railroad corporation doing business in this State, who are intrusted by such corporation with the authority of superintendence, control, or command of other persons in the employ or service of such corporation, or with the authority to direct any other servant in the performance of any duty of such servant, or with the duty of inspection or other duty owing by the master to the servant, are vice-principals of such corporation, and are not fellow-servants with such employees. Vice-principals defined.

SEC. 2875. All persons who are engaged in the common service of such railroad corporation, and who while so engaged, are working together at the same time and place, to a common purpose of same grade, neither of such persons being intrusted by such corporation with any superintendence or control over their fellow-employees, are fellow-servants with each other: *Provided*, That nothing herein contained shall be so construed as to make any agent or servant of such corporation in the service of such corporation a fellow-servant with any other agent or servant of such corporation engaged in any other department or service of such corporation. Fellow-servants defined.

SEC. 2876. No contract made between any railroad corporation and any of its agents or servants, based upon the contingency of the injury or death of any agent or servant, limiting the liability of such railroad corporation for any damages under the provisions of this act, shall be valid or binding, but all such contracts or agreements shall be null and void. Contracts limiting liability.

SEC. 2876a (added by act, page 138, Acts of 1905). Whenever the words "railroad companies" or "railroad corporation" shall be found in any section of this chapter it shall be taken and construed to include all companies, corporations, person or persons operating any railroad in this State, and wherever the word "railroad" occurs in any section in this chapter it shall be taken and construed to include all railroads operated in this State by whatever motive or power propelled, and shall include all railroads or Definitions.

railways, commonly known as street railways, and all railroads operated by terminal companies or associations, known as "terminal railroads" or "railways" as well as all railways or railroads operated anywhere in the State, commonly known as electric railroads, whether they be wholly or in part in the city or country districts. Also all railroads within the country or city operated by what is commonly known as cable or motor power, or by horse power.

ACTS OF 1907.

Liability of mine operators for injury to employees.

(Page 251.)

Acts of fellow-servants.

SECTION 1. Every person, company or corporation operating a mine or mines in this State, producing lead, zinc, coal or other valuable minerals, shall be liable for all damages sustained by any agent or servant thereof while engaged in operating such mine or mines, by reason of the negligence of any other agent or servant thereof: *Provided*, That it may be shown in defense that the person injured was guilty of negligence contributing as a proximate cause to produce the injury.

Vice-principals.

SEC. 2. All persons engaged in the service of any such person, company or corporation doing business in this State, who are intrusted by such person, company or corporation with the authority of superintendence, control or command of other persons in the employ or service of such person, company or corporation, or with authority to direct any other servant in the performance of any duty of such servant, or with the duty of inspection or other duty owing by the master to the servant, are vice-principals of such person, company or corporation, and are not fellow-servants with such employees.

Fellow-servants.

SEC. 3. All persons who are engaged in the common service of such person, company or corporation operating a mine or mines, and while so engaged are working together at the same time and place to a common purpose of the same grade, neither of such persons being intrusted by such person, company or corporation with any superintendence or control over their fellow-employees, are fellow-servants with each other.

Contracts limiting liability.

SEC. 4. No contracts made between any person, company or corporation so operating such mine or mines and their agents or servants, based upon the contingency of the injury or death to any such agent or servant, limiting the liability of the employer for any damages under the provisions of this act, shall be valid or binding, but all such contracts or agreements shall be null and void.

Application of law.

SEC. 4a. Nothing in this act shall be so construed as applying to or including the operation, construction or repairing of concentrating mills, flumes or tramways wholly above ground.

[The law regulating the working of mines provides that a right of action shall accrue to persons injured or to the heirs or dependents of persons killed because of a failure of the owner or operator to comply with its provisions. Revised Statutes, section 8820.

Laws requiring railroad companies to block switches, frogs, and guard rails, and also to provide automatic couplers, drive-wheel power brakes, and safety appliances on railroad trains take away from companies failing to comply with such laws the defense of contributory negligence in actions for damages where the employee is injured by the company's neglect in these particulars. In the latter law also the employee shall not be deemed to have assumed the risks occasioned by the company's neglect. Acts of 1907, act, page 181; act, page 182.]

MONTANA.

CONSTITUTION.

ARTICLE 15.—*Contracts of employees waiving right to damages.*

Contracts limiting liability.

SECTION 16. It shall be unlawful for any person, company or corporation to require of its servants or employees, as a condition of their employment or otherwise, any contract or agreement, whereby such persons, company or corporation, shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof; and such contracts shall be absolutely null and void.

CODES AND STATUTES—1895.

CIVIL CODE.

Contracts of employees waiving right to damages.

Contracts invalid.

SECTION 2242. Any contract or agreement entered into by any person, company or corporation, with its servants or employees, whereby such person, company or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, shall be absolutely null and void.

Liability of employers for injuries to employees.

Employees to be indemnified, when.

SECTION 2660. An employer must indemnify his employee, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

Ordinary risks.

SEC. 2661. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

Want of care.

SEC. 2662. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

ACTS OF 1905.

CHAPTER 1.—*Liability of railroad companies for injuries to employees.*

Acts of fellow-servants.

SECTION 1. Every person or corporation operating a railway or railroad in this State shall be liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee or employees thereof, or by the mismanagement of any other employee or employees thereof, and in consequence of the willful wrongs, whether of commission or omission, of any other employee or employees thereof, when such neglect, mismanagement or wrongs, are in any manner connected with the use and operation of any railway or railroad on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding.

Death.

SEC. 2. In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action shall survive and may be prosecuted and maintained by his heirs or personal representatives.

CHAPTER 23.—*Liability of employers for injuries to employees.*

Acts of superintendents, etc.

SECTION 1. Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores shall be liable for any damages sustained by any employees thereof within this State, without contributing negligence on his part, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting, or other engineer, or crane men.

Contracts not a bar.

SEC. 2. No contract of insurance, relief, benefit, or indemnity in case of injury or death, nor any other contract entered into before the injury, between the person injured and any of the employers named in this act shall constitute any bar or defense to any cause or action brought under the provision of this act.

Death.

SEC. 3. In case of the death of any such employees in consequence of any injury or damages so sustained, the right of action shall survive and may be prosecuted and maintained by its heirs, or personal representatives.

NEBRASKA.

ACTS OF 1907.

CHAPTER 48.—*Liability of railroad companies for injuries to employees.*

Acts of employees.

SECTION 1. Every railway company operating a railway engine, car or train in the State of Nebraska shall be liable to any of its employees, who at the time of injury are engaged in construction or repair work, or in the use and operation of any engine, car or train for said company, or, in the case of his death, to his personal representatives for the benefit of his widow and children, if any, if none, then to his parents, if none, then to his next of kin dependent upon him, for all damages which may result from negligence of any of its officers, agents, or employees, or by reason of any defects or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works.

Defects.

Comparative negligence.

SEC. 2. In all actions hereafter brought against any railway company to recover damages for personal injuries to an employee, or when such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery when his contributory negligence was slight and that of the employer was gross in comparison, but damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee, all questions of negligence and contributory negligence shall be for the jury.

Contracts not a bar.

SEC. 3. No contract of employment, insurance, relief benefit, or indemnity for injury or death hereafter entered into by or on behalf of any employee nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any railway company the defendant may set-off any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee or, in case of his death, to his personal representatives.

[The statute directing the use of automatic couplers and power brakes on railroad trains provides that employees injured because of violation of the law shall not be considered as waiving rights to recover damages by continuing in the service of the negligent company. Compiled Statutes of 1881, Tenth Edition, section 1799.]

NEVADA.

ACTS OF 1905.

CHAPTER 142.—*Right of action for personal injuries.*

Negligent persons liable.

SECTION 1. Whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury shall be liable to the person injured for damages; and where the person causing such injury is employed by another person or corporation responsible for his conduct, such person or corporation so responsible shall be liable to the person injured for damages.

Employers.

Determination of liability.

SEC. 2. Such liability, however, where not discharged by agreement and settlement shall exist only in so far as the same shall be ascertained and adjudged by a State or Federal court of competent jurisdiction in this State in an action brought for that purpose by the person injured.

ACTS OF 1907.

CHAPTER 214.—*Liability of employers for injuries to employees.*

Acts of employees.

SECTION 1. Every common carrier engaged in trade or commerce in the State of Nevada, and every mine and mill owner and operator actually engaged in mining, or in milling or reduction of ores, in the State of Nevada, shall be liable to any of its employees, or, in case of the death of such employee, to his personal representative for the benefit of his widow and children, if any, and if none, then for his next of kin, for all damages which may result from the negligence of the officers, agents, or employees of said common carrier or mine or mill operator, or by reason of any defect or insufficiency due to their negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works, or to their negligent handling or storing of explosives.

Defects.

Comparative negligence.

SEC. 2. In all actions hereinafter brought against any common carrier or mine or mill owner and operator to recover damages for personal injuries to or death of an employee, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and the negligence of the employer, or its officers, agents, or employees was gross in comparison. All questions of negligence and contributory negligence shall be for the jury.

Contracts not a bar.

SEC. 3. No contract of employment, insurance, relief benefit, or indemnity for injury or death, entered into by or on behalf of any employee, nor the acceptance of any insurance, relief benefit or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to, or death of such employee: *Provided, however*, That upon the trial of such action the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the person entitled thereto.

NEW MEXICO.

COMPILED LAWS OF 1897.

Liability of railroad companies for injuries to employees.

Lack of care in selecting employees.

SECTION 3216. Every corporation operating a railway in this Territory shall be liable in a sum sufficient to compensate such employee for all damages sustained by any employee of such corporation, the person injured or damaged being without fault on his or her part, occurring or sustained in consequence of any mismanagement, carelessness, neglect, default or wrongful act of any agent or employee of such corporation while in the exercise of

their several duties, when such mismanagement, carelessness, neglect, default or wrongful act of such employee or agent could have been avoided by such corporation through the exercise of reasonable care or diligence in the selection of competent employees or agents, or by not overworking said employees or requiring or allowing them to work an unusual or unreasonable number of hours; and any contract restricting such liability shall be deemed to be contrary to the public policy of this Territory and therefore void.

Overworking employees.

Use of defective cars, etc.

SEC. 3217. It shall be unlawful for any such corporation knowingly and willfully to use or operate any car or locomotive that is defective, or any car or locomotive upon which the machinery or attachments thereto belonging are in any manner defective, or shops or machinery and attachments thereof which are in any manner defective, which defects might have been previously ascertained by ordinary care and diligence by said corporation.

If the employee of any such corporation shall receive any injury by reason of such defect in any car or locomotive or machinery or attachments thereto belonging, or shops or machinery and attachments thereof, owned and operated, or being run and operated by such corporation, through no fault of his own, such corporation shall be liable for such injury, and upon proof of the same in an action brought by such employee or his legal representatives, in any court of proper jurisdiction, against such railroad corporation for damages on account of such injury so received, shall be entitled to recover against such corporation any sum commensurate with the injuries sustained: *Provided*, That it shall be the duty of all the employees of railroad corporations to promptly report all defects coming to their knowledge in any such car or locomotive or shops or machinery and attachments thereof to the proper officer or agent of such corporation and after such report the doctrine of contributory negligence shall not apply to such employee.

Damages.

Proviso.

Death.

SEC. 3218. Whenever the death of an employee shall be caused under circumstances from which a cause of action would have accrued under the provisions of the two preceding sections, if death had not ensued, an action therefor shall be brought in the manner provided by section three thousand two hundred and fifteen, and any sum recovered therein shall be subject to all of the provisions of said section three thousand two hundred and fifteen.

NEW YORK.

ACTS OF 1902.

CHAPTER 600.—*Liability of employers for injuries to employees.*

Injuries caused by—

SECTION 1. Where, after this act takes effect, personal injury is caused to an employee who is himself in the exercise of due care and diligence at the time:

Defective machinery;

1. By reason of any defect in the condition of the ways, works or machinery connected with or used in the business of the employer which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and intrusted by him with the duty of seeing that the ways, works or machinery were in proper condition;

Negligence of superintendent.

2. By reason of the negligence of any person in the service of the employer intrusted with and exercising superintendence whose sole or principal duty is that of superintendence, or in the absence of such superintendent, of any person acting as superintendent with the authority or consent of such employer; the employee, or in case the injury results in death, the executor or administrator of a deceased employee who has left him surviving a husband, wife or next of kin, shall have the same right of compensation and remedies against the employer as if the employee has not been an employee of nor in the service of the employer nor engaged in his work. The provisions of law relating to actions for causing death by negligence, so far as the same are

Right of action.

consistent with this act, shall apply to an action brought by an executor or administrator of a deceased employee suing under the provisions of this act.

Limitation.

SEC. 2. No action for recovery of compensation for injury or death under this act shall be maintained unless notice of the time, place and cause of the injury is given to the employer within one hundred and twenty days and the action is commenced within one year after the occurrence of the acident causing the injury or death. The notice required by this section shall be in writing and signed by the person injured or by some one in his behalf, but if from physical or mental incapacity it is impossible for the person injured to give notice within the time provided in said section, he may give the same within ten days after such incapacity is removed. In case of his death without having given such notice, his executor or administrator may give such notice within sixty days after his appointment, but no notice under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of the injury if it be shown that there was no intention to mislead and that the party entitled to notice was not in fact misled thereby. The notice required by this section shall be served on the employer or if there is more than one employer, upon one of such employers, and may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served. The notice may be served by post by letter addressed to the person on whom it is to be served, at his last known place of residence or place of business and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation, notice shall be served by delivering the same or by sending it by post addressed to the office or principal place of business of such corporation.

Notice.

Assumed risks.

SEC. 3. An employee by entering upon or continuing in the service of the employer shall be presumed to have assented to the necessary risks of the occupation or employment and no others. The necessary risks of the occupation or employment shall, in all cases arising after this act takes effect be considered as including those risks, and those only, inherent in the nature of the business which remain after the employer has exercised due care in providing for the safety of his employees, and has complied with the laws affecting or regulating such business or occupation for the greater safety of such employees. In an action maintained for the recovery of damages for personal injuries to an employee received after this act takes effect, owing to any cause for which the employer would otherwise be liable, the fact that the employee continued in the service of the employer in the same place and course of employment after the discovery by such employee, or after he had been informed of, the danger of personal injury therefrom, shall not, as a matter of law, be considered as an assent by such employee to the existence or continuance of such risks of personal injury therefrom, or as negligence contributing to such injury. The question whether the employee understood and assumed the risk of such injury, or was guilty of contributory negligence, by his continuance in the same place and course of employment with knowledge of the risk of injury shall be one of fact, subject to the usual powers of the court in a proper case to set aside a verdict rendered contrary to the evidence. An employee, or his legal representative, shall not be entitled under this act to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury and failed, within a reasonable time, to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who had intrusted to him some general superintendence, unless it shall appear on the trial that such defect or negligence was known to such employer, or superior person, prior to such injuries to the employee.

Knowledge of defect.

Failure to report.

Contribution through insurance fund.

SEC. 4. An employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries, for which compensation may be recovered under this act, or to any relief society or benefit fund created under the laws of this State, may prove in mitigation of damages recoverable by an employee under this act such proportion of the pecuniary benefit which has been received by such employee from such fund or society on account of such contribution of employer, as the contribution of such employer to such fund or society bears to the whole contribution thereto.

Act construed.

SEC. 5. Every existing right of action for negligence or to recover damages for injuries resulting in death is continued and nothing in this act contained shall be construed as limiting any such right of action, nor shall the failure to give the notice provided for in section two of this act be a bar to the maintenance of a suit upon any such existing right of action.

ACTS OF 1906.

CHAPTER 657.—*Liability of railroad companies for injuries to employees.*

SECTION 1. Chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, * * * [relating to the organization, etc., of railroads] is hereby amended by adding thereto a new section, to be known as section forty-two-a, as follows:

Liability continued.

Section 42-a. In all actions against a railroad corporation, foreign or domestic, doing business in this State, or against a receiver thereof, for personal injury to, or death resulting from personal injury of any person, while in the employment of such corporation, or receiver, arising from the negligence of such corporation or receiver or of any of its or his officers or employees, every employee, or his legal representatives, shall have the same rights and remedies for an injury, or for death, suffered by him from the act or omission of such corporation or receiver or of its or his officers or employees, as are now allowed by law, and, in addition to the liability now existing by law, it shall be held in such actions that persons engaged in the service of any railroad corporation, foreign or domestic, doing business in this State, or in the service of a receiver thereof, who are intrusted by such corporation or receiver, with the authority of superintendence, control or command of other persons in the employment of such corporation or receiver, or with the authority to direct or control any other employee in the performance of the duty of such employee, or who have, as a part of their duty, for the time being, physical control or direction of the movement of a signal, switch, locomotive engine, car, train or telegraph office, are vice-principals of such corporation or receiver, and are not fellow-servants of such injured or deceased employee. If an employee, engaged in the service of any such railroad corporation, or of a receiver thereof, shall receive any injury by reason of any defect in the condition of the ways, works, machinery, plant, tools or implements, or of any car, train, locomotive or attachment thereto belonging, owned or operated, or being run and operated by such corporation or receiver, when such defect could have been discovered by such corporation or receiver, by reasonable and proper care, tests or inspection, such corporation or receiver, shall be deemed to have had knowledge of such defect before and at the time such injury is sustained; and when the fact of such defect shall be proved upon the trial of any action in the courts of this State, brought by such employee or his legal representatives, against any such railroad corporation or receiver, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation or receiver. This section shall not affect actions or causes of action now existing; and no contract, receipt, rule or regulation, between an employee and a railroad corporation or receiver, shall exempt or limit the liability of such corporation or receiver from the provisions of this section.

Additional liability.

Vice-principals.

Defects.

Contracts.

NORTH CAROLINA.

REVISAL OF 1905.

Liability of railroad companies for injuries to employees.

SECTION 2646. Any servant or employee of any railroad company operating in this State who shall suffer injury to his person, or the personal representative of any such servant or employee who shall have suffered death in the course of his services or employment with such company by the negligence, carelessness or incompetence of any other servant, employee or agent of the company, or by any defect in the machinery, ways or appliances of the company, shall be entitled to maintain an action against such company. Any contract or agreement, expressed or implied, made by any employee of such company to waive the benefit of this section shall be null and void. Acts of fellow-servants.

[The statute relating to the operation of mines provides that injuries or death resulting from willful violation of the law or failure to comply therewith gives the injured party, or the personal representatives of deceased persons, a right of action for damages. Section 4942.]

NORTH DAKOTA.

REVISED CODES OF 1905.

Liability of employers for injuries to employees.

SECTION 4400. Every railroad company organized or doing business in this State shall be liable for all damages done to any employee of such company, in consequence of any negligence of its agents, or by any mismanagement of its engineers, or other employees, to any person sustaining such damage; and no contract which restricts such liability shall be legal or binding. Acts of fellow-servants on railroads.

SEC. 5392. Every one is responsible not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully or by want of ordinary care, brought the injury upon himself. * * * Want of care, etc.

SEC. 5544. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee. Ordinary risks.

SEC. 5545. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care. Indemnity.

SEC. 6556. Every person who suffers detriment from the unlawful act or omission of another may recover from the person in fault a compensation therefor in money, which is called damages. Damages.

ACTS OF 1907.

CHAPTER 203.—*Liability of railroad companies for injuries to employees.*

SECTION 1. Every common carrier shall be liable to any of its employees, or in case of the death of an employee, to his personal representative, for the benefit of his widow, children or next of kin, for all damages which may result from the negligence of any of its officers, agents or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works. Acts of employees. Defects.

SEC. 2. In all actions hereinafter brought against any common carrier to recover damages for personal injuries to an employee, Comparative negligence.

or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

Contracts not a bar.

SEC. 3. No contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit or indemnity by the person entitled thereto shall constitute a bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of said action against any common carrier, the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit or indemnity that may have been made to the injured employee, or in case of his death, to his personal representative.

Limitation.

SEC. 4. No action shall be maintained under this act unless commenced within one year from the time the cause of action accrued.

OHIO.

BATES'S ANNOTATED STATUTES—THIRD EDITION.

Liability of railroad companies for injuries to employees, etc.

Contracts waiving claims for damages.

SEC. 3365–20. It shall be unlawful for any railroad or railway corporation or company owning and operating, or operating, * * * a railroad in whole or in part in this State, to adopt or promulgate any rule or regulation for the government of its servants or employees, or make or enter into any contract or agreement with any person engaged in or about to engage in its service, in which, or by the terms of which, such employee in any manner, directly or indirectly, promises or agrees to hold such corporation or company harmless, on account of any injury he may receive by reason of an accident to, breakage, defect or insufficiency in the cars or machinery and attachments thereto belonging, upon any cars so owned and operated, or being run and operated by such corporation, or company being defective, and any such rule, regulation, contract or agreement shall be of no effect. It shall be unlawful for any corporation to compel or require directly or indirectly an employee to join any company association whatsoever, or to withhold any part of an employee's wages or his salary for the payment of dues or assessments in any society or organization whatsoever, or demand or require either as a condition precedent to securing employment or being employed, and said railroad or railway company shall not discharge any employee because he refuses or neglects to become a member of any society or organization. And if any employee is discharged he may, at any time within ten days after receiving a notice of his discharge, demand the reason of said discharge, and said railway or railroad company thereupon shall furnish said reason to said discharged employee in writing. And no railroad company, insurance society or association, or other person shall demand, accept, require, or enter into any contract, agreement, stipulation with any person about to enter, or in the employ of any railroad company whereby such person stipulates or agrees to surrender or waive any right to damages against any railroad company, thereafter arising for personal injury or death, or whereby he agrees to surrender or waive in case he asserts the same, any other right whatsoever, and all such stipulations and agreements shall be void, and every corporation, association or person violating or aiding or abetting in the violation of this section shall for each offense forfeit and pay to the person wronged or deprived of his rights hereunder the sum not less than fifty dollars ($50) nor more than five hundred dollars ($500) to be recovered in a civil action.

Compelling to join relief society.

Reason for discharge.

Waiving claims for damages.

Use of defective machinery.

SEC. 3365–21. It shall be unlawful for any such corporation to knowingly or negligently use or operate any car or locomotive that is defective, or any car or locomotive upon which the machinery or attachments thereto belonging are in any manner defective. If the employee of any such corporation shall receive any injury by reason of any defect in any car or locomotive, or the machinery or attachments thereto belonging, owned and operated, or being run and operated by such corporation, such corporation shall be deemed to have had knowledge of such defect before and at the time such injury is so sustained, and when the fact of such defect shall be made to appear in the trial of any action in the courts of this State, brought by such employee, or his legal representatives, against any railroad corporation for damages, on account of such injuries so received, the same shall be prima facie evidence of negligence on the part of such corporation.

Evidence.

Superior servants.

SEC. 3365–22. In all actions against the railroad company for personal injury to, or death resulting from personal injury, of any person, while in the employ of such company, arising from the negligence of such company or any of its officers or employees, it shall be held in addition to the liability now existing by law, that every person in the employ of such company, actually having power or authority to direct or control any other employee of such company, is not the fellow-servant, but superior of such other employee, also that every person in the employ of such company having charge or control of employees in any separate branch or department, shall be held to be the superior and not fellow-servant of employees in any other branch or department who have no power to direct or control in the branch or department in which they are employed.

ACTS OF 1902.

Liabilities of employers for injuries to employees.

(Page 114.)

Injuries resulting from defective machinery, etc.

SECTION 1. An employer shall be responsible in damages for personal injury caused to an employee, who is himself in the exercise of due care and diligence at the time, by reason of any defect in the condition of the machinery or appliances connected with or used in the business of the employer, which arose from, or had not been discovered or remedied owing to the negligence of the employer, or of any person in the service of the employer, intrusted by him with the duty of inspection, repair, or of seeing that the machinery or applances were in proper condition.

ACTS OF 1904.

Employers' liability—Assumption of risk.

(Page 547.)

Failure to provide guards, etc.

SECTION 1. In any action brought by an employee, or his legal representative, against his employer, to recover for personal injuries, when it shall appear that the injury was caused in whole or in part by the negligent omission of such employer to guard or protect his machinery or appliances, or the premises or place where said employee was employed, in the manner required by any penal statute of the State or United States in force at the date of the passage of this act, the fact that such employee continued in said employment with knowledge of such omission, shall not operate as a defense; and in such action, if the jury find for the plaintiff, it may award such damages not exceeding, for injuries resulting in death, the sum of five thousand dollars, and for injuries not so resulting, the sum of three thousand dollars, as it may find proportioned to the pecuniary damages resulting

from said injuries; but nothing herein shall affect the provisions of section 6135 of the Revised Statutes.

Nothing herein contained shall be construed as affecting the defense of contributory negligence, nor the admissibility of evidence competent to support such defense.

[The statute regulating the working of mines gives a right of action for injuries or death occasioned by any violation of the act or any willful failure to comply with its provisions. An. Stat., section 301.

A railroad company whose superintendent or station agent has received notice of a defective coupler or brake is liable for injuries occasioned by such defect after the expiration of twenty-four hours after the notice has been received. An. Stat., section 3365f.

A statute directing the use of self-cleaning ash dump pans on railroad locomotives denies to companies neglecting to comply with the law the defense of contributory negligence or of assumed risks in actions for personal injury to or death of any engineer or fireman occasioned by such negligence. Acts of 1906, page 46.

A statute directing the installation of power or train brakes and of automatic couplers on railway trains provides that in actions for injuries or death caused by failure to observe the law the defenses of assumed risks and contributory negligence will not be allowed. Acts of 1906, act, page 75.]

OKLAHOMA.

CONSTITUTION OF 1907.

ARTICLE IX.—*Liability of employers for injuries to employees.*

Fellow-service not a defense.

SECTION 36. The common law doctrine of the fellow-servant, so far as it affects the liability of the master for injuries to his servant, resulting from the acts or omissions of any other servant or servants of the common master, is abrogated as to every employee of every railroad company and every street railway company or interurban railway company, and of every person, firm, or corporation engaged in mining in this State; and every such employee shall have the same right to recover for every injury suffered by him for the acts or omissions of any other employee or employees of the common master that a servant would have if such acts or omissions were those of the master himself in the performance of a nonassignable duty; and when death, whether instantaneous or not, results to such employee from any injury for which he could have recovered under the above provisions, had not death occurred, then his legal or personal representative, surviving consort or relatives, or any trustee, curator, committee or guardian of such consort or relatives, shall have the same rights and remedies with respect thereto, as if death had been caused by the negligence of the master. And every railroad company and every street railway company or interurban railway company, and every person, firm, or corporation engaged in underground mining in this State shall be liable under this section, for the acts of his or its receivers.

Death.

Nothing contained in this section shall restrict the power of the legislature to extend to the employees of any person, firm, or corporation, the rights and remedies herein provided for.

ARTICLE XXIII.—*Contributory negligence and assumption of risk.*

Questions for jury.

SECTION 6. The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact, and shall, at all times, be left to the jury.

OREGON.

ACTS OF 1903.

Liability of railroad companies for injuries to employees.

(Page 20.)

SECTION 1. Every corporation operating a railroad in this State, whether such corporation be created under the laws of this State, or otherwise, shall be liable in damages for any and all injury sustained by any employee of such corporation as follows: When such injury results from the wrongful act, neglect, or default of an agent or officer of such corporation, superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured, or the services of the employee by whom he is injured; and also when such injury results from the wrongful act, neglect, or default of a coemployee engaged in another department of labor from that of the employee injured, or of a coemployee on another train of cars, or of a coemployee who has charge of any switch, signal point, or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders. Knowledge by an employee injured of the defective or unsafe character or condition of any machinery, ways, appliances, or structures of such corporation shall not of itself be a bar to recovery for any injury or death caused thereby. When death, whether instantaneous, or otherwise, results from an injury to any employee of such corporation received as aforesaid, the personal representative of such employee shall have a right of action therefor against such corporation, and may recover damages in respect thereof. Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section, or any part thereof, shall be null and void, and this section shall not be construed to deprive any such employee, or his personal representative, of any right or remedy to which he is now entitled under the laws of this State. Company liable, when.

SEC. 2. The rules and principles of law as to contributory negligence which apply to other cases shall apply to cases arising under this act, except in so far as the same are herein modified or changed. Contributory negligence.

[Employees whose failure to comply with the factory inspection law causes injury to employees are liable to such employees in damages. Acts of 1907, chapter 158, section 8.]

PENNSYLVANIA.

ACTS OF 1907.

ACT No. 329.—*Liability of employers for injuries to employees.*

SECTION 1. In all actions brought to recover from an employer for injuries suffered by his employee, the negligence of a fellow-servant of the employee shall not be a defense, where the injury was caused or contributed to by any of the following causes; namely, Fellow-service not a defense, when.

Any defect in the works, plant, or machinery, of which the employer could have had knowledge by the exercise of ordinary care; the neglect of any person engaged as superintendent, manager, foreman, or any other person in charge or control of the works, plant, or machinery; the negligence of any person in charge of or directing the particular work in which the employee was engaged at the time of the injury or death; the negligence of any person to whose orders the employee was bound to conform, and did conform, and, by reason of his having conformed thereto, the injury or death resulted; the act of any fellow-servant, done

in obedience to the rules, instructions, or orders given by the employer, or any other person who has authority to direct the doing of said act.

Vice-principals.

SEC. 2. The manager, superintendent, foreman, or other person in charge or control of the works, or any part of the works, shall, under this act, be held as the agent of the employer, in all suits for damages for death or injury suffered by employees.

PORTO RICO.

REVISED STATUTES—1902.

Liability of employers for injuries to employees.

Injury caused by—

SECTION 322. Where, after the passage of this act, personal injury is caused to an employee who is himself in the exercise of due care and diligence at the time:

Defective machinery;

1. By reason of any defect in the condition of the ways, works, or machinery, connected with, or used in the business of the employer, which arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, or machinery, were in proper condition; or

Negligence of superintendent;

2. By reason of the negligence of any person in the service of the employer intrusted with the exercising of superintendence whose sole or principal duty is that of superintendence; or

Person in charge of locomotive, etc.

3. By reason of the negligence of any person in the service of the employer who has charge of, or physically controls, any signal switch, locomotive engine, car or train in motion, whether attached to an engine or not, upon a railroad, the employee, or, in case the injury results in death, his widow or children, or both of them, and if there be no such widow and children, then his parents (provided that said parents were dependent upon such employee for support) may maintain an action for damages against the employer, pursuant to the provisions of this act.

Who may sue.

Damages.

SEC. 323. When an employee receives a personal injury under any of the conditions enumerated in section 1 hereof [sec. 322], he may bring an action against his employer before the proper district court, to recover damages for such injury. The damages so recovered shall not exceed the sum of two thousand dollars, and in assessing the amount of such damages the court shall take into consideration the degree of culpability of the employer, or of the person for whose negligence the employer is liable hereunder, the sums expended by the employee for medical attendance, for drugs, medicines and similar necessary expenses, and the loss of wages while recovering from the injury; the court shall also take into consideration the physical pain and suffering caused by the injury. If the injury be of such character as to permanently impair the earning capacity of the employee, the court shall include in the damages awarded an allowance for such loss. In case the injury results in a temporary impairment of his earning capacity, the court, in addition to pain and suffering and the expenditures for medical services and drugs, shall take into consideration the average rate of wages which, under ordinary conditions, he might have earned if not injured.

Survival of action.

SEC. 324. In case of the death of the employee before the termination of the action so brought against the employer, it may be continued in the name of his widow or children, and if there be no such widow or children, then in the name of his parents, if they, or either of them, were dependent upon such employee for support at the time of the injury. If it shall appear in any action so continued in the name of the widow, children or parents of a deceased injured employee that the death was the result of the injury, damages shall be assessed by the court in a sum not to exceed three thousand dollars; and the court shall estimate such damages in accordance with:

Limit of damages.

(a) The degree of culpability of the employer or of the person for whose negligence the employer is liable.

(b) The material damage incurred by the claimant or claimants through the death of the employee in accordance with the actual needs that said claimant or claimants had to depend upon the wages of such employee for their support, taking into consideration his earning capacity and his probabilities of life, at the time of the accident.

Suit by widow, etc.

SEC. 325. When, before having commenced an action hereunder, an employee dies as the result of personal injury received under any of the conditions enumerated under section 1 hereof [sec. 322], his widow, children, or both of them, or if there be no such widow or children, then his parents, provided such parents were dependent upon such employee for support at the time of the injury, may maintain an action against the employer before the proper district court, for damages caused by the death of such employee. Such damages shall not exceed the sum of three thousand dollars and shall be fixed by the court in accordance with:

(a) The degree of culpability of the employer or of the person for whose negligence the employer is liable.

(b) The material damage incurred by the claimant or claimants through the death of the employee in accordance with the actual needs that such claimant or claimants had to depend upon the wages of such employee for their support, taking into consideration his earning capacity and his probabilities of life, at the time of the accident.

Division of damages.

SEC. 326. The court, when fixing the amount of damages to be paid in case of death by personal injury under this act, shall determine the amount due to each of the claimants in proportion to the material damages incurred by each of them in accordance with the actual needs which each of them had to depend upon the wages of the employee whose death was caused by accident.

Limitation.

SEC. 327. No action for the recovery of damages for injury or death under the provisions of this act shall be maintained unless notice of the time, place, and cause of the injury is given to the employer within thirty days after the injury is received or unless it is commenced within six months from the date of the injury. The notice required by this section shall be in writing, signed by the person injured or by some one in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in said section, he may give the same within ten days after the incapacity is removed, and in case of his death without having given the notice and without having been at any time after his injury of sufficient capacity to give the notice the person or persons entitled to claim compensation pursuant to the provisions of this act, or their representatives, may give such notice within thirty days after the death of such employee. But no notice given under the provisions of this section shall be deemed to be invalid or insufficient solely by reason of any inaccuracy in stating the time, place or cause of injury: *Provided*, It is shown that there was no intention to mislead, and that the party entitled to notice was not in fact misled thereby.

Employer liable, when.

SEC. 328. Whenever an employee [employer] enters into a contract, either written or verbal, with an independent contractor to do part of such employer's work, or whenever such contractor enters into a contract with a subcontractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for injuries to the employees of such contractor or subcontractor, by reason of any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer, or furnished by him, and if such defect arose or had not been discovered or remedied through the negligence of the employer or of some person intrusted by him with the duty of seeing that they were in proper condition.

Knowledge of defect a bar.

SEC. 329. No employee, or his widow or children, or either of them, or his parents, if there be no such widow or children, shall be entitled under this act to any right of compensation or remedy against the employer in any case where such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who had intrusted to him some general superintendence.

Contribution to insurance fund.

SEC. 330. Any employer who shall have contributed to an insurance fund created and maintained for the mutual purpose of indemnifying an employee for personal injuries for which compensation may be recovered under this act, or who has insured the said employee in any insurance company against the accidents of labor, shall be entitled to have deducted from the sum which he shall have to pay as compensation under the provisions of this act, the amount that shall have been received by the person injured, or by his widow, or children, or both of them, or by the parents, if there be no such widow and children, from the aforesaid fund or from the insurance company, by reason of the same accident.

Exceptions.

SEC. 331. This act shall not apply to injuries caused to domestic servants, or farm laborers, by fellow employees.

RHODE ISLAND.

[The statute directing the epuipment of certain buildings, including factories, with fire escapes, and the guarding of elevator shafts, etc., makes owners and lessees liable in damages for injuries or death caused by a failure to comply with its provisions. General Laws of 1896, chapter 108, sections 8 and 16.]

SOUTH CAROLINA.

CONSTITUTION.

ARTICLE 9.—*Liability of railroad companies for injuries to employees.*

Negligence of superior;

SECTION 15. Every employee of any railroad corporation shall have the same rights and remedies for any injury suffered by him from the acts or omissions of said corporations or its employees as are allowed by law to other persons not employees, when the injury results from the negligence of a superior agent or officer, or of a person having a right to control or direct the services of a party injured, and also when the injury results from the negligence of a fellow-servant engaged in another department of labor from that of the party injured, or of a fellow-servant on another train of cars, or one engaged about a different piece of work.

Of fellow-servants in another department.

Knowledge of defective machinery.

Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways or appliances shall be no defense to an action for injury caused thereby, except as to conductors or engineers in charge of dangerous or unsafe cars or engines voluntarily operated by them.

Injury causing death.

When death ensues from any injury to employees, the legal or personal representatives of the person injured shall have the same right and remedies as are allowed by law to such representatives of other persons.

Contract waiving rights.

Any contract or agreement, expressed or implied, made by any employee to waive the benefit of this section shall be null and void; and this section shall not be construed to deprive any employee of a corporation, or his legal or personal representative, of any remedy or right that he now has by the law of the land. The general assembly may extend the remedies herein provided for to any other class of employees.

CODE OF 1902.

CIVIL CODE.

Rights and remedies of employees on street railways.

SECTION 2848. Every employee of any street railway doing business in this State shall have the same rights and remedies for an injury suffered by any person from the acts or omission of said corporation, or its employees, as are provided by the constitution for employees of railroad corporations. What remedies apply.

ACTS OF 1903.

ACT No. 48.—*Liability of railroad companies for injuries to employees—Relief departments.*

SECTION 1. From and after the approval of this act, when any railroad company has what is usually called a relief department for its employees, the members of which are required or permitted to pay some dues, fees, moneys or compensation to be entitled to the benefits thereof, upon the death or injury of the employee, a member of such relief department, such railroad company is hereby required to pay to the person entitled to same, the amount it was agreed the employee or his heirs at law should receive from such relief department; the acceptance of which amount shall not operate to estop or in any way bar the right of such employee, or his personal representative, from recovering damages of such railroad company for injury or death caused by the negligence of such company, its agents or servants, as now provided by law; and any contract, or agreement to the contrary, shall be ineffective for that purpose. Settlement required at death, etc. Benefit not a bar to action for damages.

SOUTH DAKOTA.

REVISED CODES OF 1903.

CIVIL CODE.

Liability of employers for injuries to employees.

SECTION 1449. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee. Ordinary risks.

SEC. 1450. An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care. Want of care.

ACTS OF 1907.

CHAPTER 219.—*Liability of railroad companies for injuries to employees.*

SECTION 1. Every common carrier engaged in trade or commerce in the State of South Dakota shall be liable to any of its employees, or in case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, road-bed, ways or works. Acts of employees. Defects.

SEC. 2. In all actions hereafter brought against any common carrier to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that Comparative negligence.

the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was less than the negligence of the employer, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

Contracts not a bar.

SEC. 3. No contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any common carrier the defendant may set off herein any sum it has contributed towards any insurance, relief benefit or indemnity that may have been paid to the injured employee, or in case of his death, to his personal representative.

Limitation.

SEC. 4. No action shall be maintained under this act, unless commenced within two years from the time the cause of action accrued.

TEXAS.

ACTS OF 1897, SPECIAL SESSION.

CHAPTER 6.—*Liability of railroad companies for injuries to employees.*

Acts of fellow-servants.

SECTION 1. Every person, receiver, or corporation operating a railroad or street railway the line of which shall be situated in whole or in part in this State, shall be liable for all damages sustained by any servant or employee thereof while engaged in the work of operating the cars, locomotives, or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employee of such person, receiver, or corporation, and the fact that such servants or employees were fellow-servants with each other shall not impair or destroy such liability.

Vice-principals defined.

SEC. 2. All persons engaged in the service of any person, receiver, or corporation, controlling or operating a railroad or street railway the line of which shall be situated in whole or in part in this State, who are intrusted by such person, receiver, or corporation with the authority of superintendence, control, or command of other servants or employees of such person, receiver, or corporation, or with the authority to direct any other employee in the performance of any duty of such employee, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their coemployees.

Fellow-servants defined.

SEC. 3. All persons who are engaged in the common service of such person, receiver, or corporation, controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service and are working together at the same time and place and at the same piece of work and to a common purpose, are fellow-servants with each other. Employees who do not come within the provisions of this section shall not be considered fellow-servants.

Contracts limiting liability.

SEC. 4. No contract made between the employer and employee based upon the contingency of death or injury of the employee and limiting the liability of the employer under this act or fixing damages to be recovered shall be valid or binding.

Contributory negligence.

SEC. 5. Nothing in this act shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employee is caused proximately by his own contributory negligence.

ACTS OF 1905.

CHAPTER 163.—*Liability of employers for injuries to employees—Assumption of risk.*

Defense not allowed, when.

SECTION 1. In any suit against a person, corporation or receiver operating a railroad or street railway for damages for the death or personal injury of an employee or servant, caused by the wrong or negligence of such person, corporation or receiver, the plea of assumed risk of the deceased or injured employee where the ground of the plea is knowledge or means of knowledge of the effect and danger which caused the injury or death shall not be available in the following cases:

First. Where such employee had an opportunity before being injured or killed to inform the employer or a superior intrusted by the employer with the authority to remedy or cause to be remedied the defect, and does notify or cause to be notified the employer or superior thereof within a reasonable time: *Provided*, It shall not be necessary to give such information where the employer or such superior thereof already knows of the defect.

Second. Where a person of ordinary care would have continued in the service with the knowledge of the defect and danger and in such case it shall not be necessary that the servant or employee give notice of the defect as provided in subdivision 1 hereof.

UTAH.

REVISED STATUTES OF 1898.

Fellow-servants.

Vice-principals defined.

SECTION 1342. All persons engaged in the service of any person, firm, or corporation, foreign or domestic, doing business in this State, who are intrusted by such person, firm, or corporation as employer with the authority of superintendence, control, or command of other persons in the employ or service of such employer, or with the authority to direct any other employee in the performance of any duties of such employee, are vice-principals of such employer and are not fellow-servants.

Fellow-servants.

SEC. 1343. All persons who are engaged in the service of such employer, and who, while so engaged, are in the same grade of service and are working together at the same time and place and to a common purpose, neither of such persons being intrusted by such employer with any superintendence or control over his fellow employees, are fellow-servants with each other: *Provided*, That nothing herein contained shall be so construed as to make the employees of such employer fellow-servants with other employees engaged in any other department of service of such employer. Employees who do not come within the provisions of this section shall not be considered fellow-servants.

Proviso.

[The statute regulating the working of coal and hydrocarbon mines directs the employment of a certified mining or fire boss, and provides that where an accident causing personal injury or death occurs in a mine in which the mining or fire boss has no certificate of competency the owner or operator of the mine shall be liable in the full amount of damages sustained. Acts of 1905, chapter 122, section 16.]

VERMONT.

[Statutes directing the installation of safety appliances on railroads make negligent companies liable for damages and injuries resulting from failure to comply with the law. Statutes of 1894, sections 3887, 3911.]

VIRGINIA.

CONSTITUTION.

ARTICLE 12.—*Liability of railroad companies for injuries to employees.*

Acts of fellow-servants.

SECTION 162. The doctrine of fellow-servant, so far as it affects the liability of the master for injuries to his servant resulting from the acts or omissions of any other servant or servants of the common master, is, to the extent hereinafter stated, abolished as to every employee of a railroad company, engaged in the physical construction, repair or maintenance of its roadway, track or any of the structures connected therewith, or in any work in or upon a car or engine standing upon a track, or in the physical operation of a train, car, engine, or switch, or in any service requiring his presence upon a train, car, or engine; and every such employee shall have the same right to recover for every injury suffered by him from the acts or omissions of any other employee or employees of the common master, that a servant would have (at the time when this constitution goes into effect), if such acts or omissions were those of the master himself in the performance of a nonassignable duty: *Provided*, That the injury, so suffered by such railroad employee, result from the negligence of an officer, or agent, of the company of a higher grade of service than himself, or from that of a person, employed by the company, having the right, or charged with the duty, to control or direct the general services or the immediate work of the party injured, or the general services or the immediate work of the coemployee through, or by, whose act or omission he is injured; or that it result from the negligence of a coemployee engaged in another department of labor, or engaged upon, or in charge of, any car upon which, or upon the train of which it is a part, the injured employee is not at the time of receiving the injury, or who is in charge of any switch, signal point, or locomotive engine, or is charged with dispatching trains or transmitting telegraphic or telephonic orders therefor; and whether such negligence be in the performance of an assignable or nonassignable duty. The physical construction, repair or maintenance of the roadway, track or any of the structures connected therewith, and the physical construction, repair, maintenance, cleaning or operation of trains, cars or engines, shall be regarded as different departments of labor within the meaning of this section. Knowledge, by any such railroad employee injured, of the defective or unsafe character or condition of any machinery, ways, appliances or structures, shall be no defense to an action for injury caused thereby. When death, whether instantaneous or not, results to such an employee from any injury for which he could have recovered, under the above provisions, had death not occurred, then his legal or personal representative, surviving consort, and relatives (and any trustee, curator, committee or guardian of such consort or relatives) shall, respectively, have the same rights and remedies with respect thereto as if his death had been caused by the negligence of a coemployee while in the performance, as vice-principal, of a nonassignable duty of the master. Every contract or agreement, express or implied, made by an employee, to waive the benefit of this section, shall be null and void. This section shall not be construed to deprive any employee, or his legal or personal representative, surviving consort or relatives (or any trustee, curator, committee or guardian of such consort or relatives), of any rights or remedies that he or they may have by the law of the land, at the time this constitution goes into effect. Nothing contained in this section shall restrict the power of the general assembly to further enlarge, for the above-named class of employees, the rights and remedies hereinbefore provided for, or to extend such rights and remedies to, or otherwise enlarge the present rights and remedies of, any other class of employees of railroads or of employees of any person, firm or corporation.

Negligence of superintendent.

Persons in another department, etc.

Injuries causing death.

Contracts waiving rights.

Provisions not restrictive.

CODE OF 1904.

Liability of railroad companies for injuries to employees.

SECTION 1294k. Every corporation operating a railroad in this State, whether such corporation be created under the laws of this State or otherwise, shall be liable in damages for any and all injuries sustained by any employee of such corporation as follows: When such injury results from the wrongful act, neglect, or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured, or the services of the employee by whom he is injured; and also when such injury results from the wrongful act, neglect, or default of a coemployee engaged in another department of labor from that of the employee injured, or of a coemployee on another train of cars, or of a coemployee who has charge of any switch, signal point, or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders. Knowledge of any employee injured of the defective or unsafe character or condition of any machinery, ways, appliances, or structures of such corporation shall not of itself be a bar to recovery for any injury or death caused thereby. When death, whether instantaneous or otherwise, results from any injury to any employee of such corporation received as aforesaid, the personal representative of such employee shall have a right of action therefor against such corporation, and may recover damages in respect thereof. Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section or any part thereof shall be null and void, and this section shall not be construed to deprive any such employee, or his personal representative, of any right or remedy to which he is now entitled under the laws of this State. The rules and principles of law as to contributory negligence, which apply to other cases, shall apply to cases arising under this act, except in so far as the same are herein modified or changed.

Liability for negligence of superintendent.

Persons in another department, etc.

Injuries causing death.

Contracts waiving rights.

Contributory negligence.

[An act directing the erection of telltales or danger signals at the approaches to bridges over railroads, tunnels, etc., makes failure to provide such devices ground for a right of action where injury or death results from such failure. Section 1294d, subsection 36.]

WASHINGTON.

[An act requiring frogs, switches, and guard rails to be blocked and guarded makes companies failing to do so liable in damages to parties injuried because of such failure. Acts of 1899, chapter 35, section 2.

Employers whose failure to comply with the factory inspection law causes injury to employees are liable to such employees in damages. Acts of 1905, chapter 84, section 8.]

WISCONSIN.

ANNOTATED STATUTES OF 1898.

Liability of railroad companies for injuries to employees.

SECTION 1816 (as amended by chapter 254, Acts of 1907). Every railroad company shall be liable for damages for all injuries whether resulting in death or not, sustained by any of its employees, subject to the provisions hereinafter contained regarding contributory negligence on the part of the injured employee:

Injuries caused by—

1. When such injury is caused by a defect in any locomotive, engine, car, rail, track, roadbed, machinery or appliance used by its employees in and about the business of their employment.

Defects;

Negligence of coemployees.

2. When such injury shall have been sustained by any officer, agent, servant or employee of such company, while engaged in the line of his duty as such and which such injury shall have been caused in whole or in greater part by the negligence of any other officer, agent, servant or employee of such company, in the discharge of, or by reason of failure to discharge his duties as such.

Comparative negligence.

3. In every action to recover for such injury the court shall submit to the jury the following questions: First, whether the company, or any officer, agent, servant or employee other than the person injured was guilty of negligence directly contributing to the injury; second, if that question is answered in the affirmative, whether the person injured was guilty of any negligence which directly contributed to the injury; third, if that question is answered in the affirmative, whether the negligence of the party so injured was slighter or greater as a contributing cause to the injury than that of the company, or any officer, agent, servant or employee other than the person so injured; and such other questions as may be necessary.

Recovery, when.

4. In all cases where the jury shall find that the negligence of the company, or any officer, agent or employee of such company was greater than the negligence of the employee so injured, and contributing in a greater degree to such injury, then the plaintiff shall be entitled to recover, and the negligence, if any, of the employee so injured shall be no bar to such recovery.

Questions for jury.

5. In all cases under this act the question of negligence and contributory negligence shall be for the jury.

Contracts, etc., not a bar.

6. No contract or receipt between any employee and a railroad company, no rule or regulation promulgated or adopted by such company, and no contract, rule or regulation in regard to any notice to be given by such employee shall exempt such corporation from the full liability imposed by this act.

Definitions.

7. The phrase "railroad company," as used in this act, shall be taken to embrace any company, association, corporation or person managing, maintaining, operating, or in possession of a railroad in whole or in part within this State whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.

Pleading statute.

8. In any action brought in the courts in this State by a resident thereof, or the representative of a deceased resident, to recover damages in accordance with this act, where the employee of any railroad company owning or operating a railroad extending into or through this State and into or through any other State or States shall have received his injuries in any other State where such railroad is owned or operated, and the contract of employment shall have been made in this State, it shall not be competent for such railroad company to plead or prove the decisions or statutes of the State where such person shall have been injured as a defense to the action brought in this State.

Exemptions.

9. The provisions of this act shall not apply to employees working in shops or offices.

[A statute directing railroad companies to block or guard all frogs in their tracks makes failure to comply with the law ground for action in damages in cases where injury results from such failure, even though the failure or violation occurs through the negligence of some other agent or employee. Section 1809b.

The law requiring dangerous machinery to be guarded takes away the defense of assumed risks in cases where employees are injured as a result of the employer's failure to comply with the law. Supp. 1906, section 1636jj.

A statute providing for the erection of telltales at the approaches to bridges, etc., over railroads, takes away from companies neglecting or refusing to comply with the law the defense of assumption of risk in cases where employees are injured on account of the lack of such telltales. Supp. 1906, section 1809i.]

WYOMING.

CONSTITUTION.

ARTICLE 10.—*Limitation and waiver of right to damages.*

Damages for injuries.

SECTION 4. No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person. Any contract or agreement with any employee waiving any right to recover damages for causing the death or injury of any employee shall be void.

ARTICE 19.—*Contracts of employees waiving right to damages.*

Contracts waiving right to damages.

SECTION 1. It shall be unlawful for any person, company or corporation, to require of its servants or employees as a condition of their employment, or otherwise, any contract or agreement, whereby such person [,] company or corporation shall be released or discharged from liability or responsibility, on account of personal injuries received by such servants or employees, while in the service of such person, company or corporation, by reason of the negligence of such person, company or corporation, or the agents or employees thereof, and such contracts shall be absolutely null and void.

[In an article on the operation of mines the constitution contains a provision granting a right of action for injuries or death occasioned because of violations by the employer of the provisions of the constitution or of laws passed in pursuance thereof. Article 9, section 4.]

UNITED STATES.

[The so-called safety-appliance law, which prescribes the use of automatic couplers, power brakes, etc., on railroad trains engaged in interstate commerce, provides that employees injured by the use of any locomotive, car, or train in violation of the act shall not be deemed to have assumed the risk, even though he knew of the unlawful use. Compiled Statutes of 1901, page 3174, section 8.

For the liability law of 1906, which was declared unconstitutional by the Supreme Court, see pages 216 and 217, below.]

CONSTRUCTION OF STATUTE LAWS.

In the following summary of opinions use has been made almost exclusively of the opinions of Federal courts and of the State courts of final resort. As appears from an examination of the statutes reproduced above, some of them, as Arizona and Connecticut, are nothing more than a restatement of the common law and require no consideration here. The general statutes of North Dakota (sections 5392, 5544, 5545) and South Dakota (sections 1449, 1450) are also examples of this class of laws,[a] though in each of these States is to be found legislation affecting the liability of railroad companies.

Prior to 1907 the California law (sections 1970, 1971) had been similar to that of the Dakotas, all three having been taken from the draft of law prepared by the New York code commission, of which David Dudley Field was the leading member. The amended form of section 1970 introduces the superior servant and departmental

[a] Elliot *v.* Chicago, M. & St. P. R. Co. (1889), 5 Dak. 523, 41 N. W. 758.

doctrines, stating the latter in such form as apparently to modify to a considerable degree the defense of coemployment. It also excepts from the class of fellow-servants certain designated groups or grades of employees. These amendments bring the section in the particulars specified within the class of laws which follow the English liability law, and would doubtless be construed as are similar provisions of such laws in other States. No case under the amended section has yet been reported from the California courts.

The law of Georgia also (sections 2610–2613, 3030) is in effect a restatement of the common law, though section 2613 declares contracts waiving the servant's rights as fixed by law to be null and void, in so far abrogating the common-law doctrine of this State. Railroads are exempted from the scope of these sections.

As stated in the first part of this discussion, the principles of the common law as construed in the various States will apply in the construction and application of statutes. Within the bounds of the statute it, of course, controls, but the common-law doctrines and definitions in use in the State are influential, subject to the rule that the adoption by a State of the statute of another State gives to the construction put upon the law by the courts of the State of earlier enactment an important influence as indicating the true intent of the legislature in adopting such law. These constructions and rulings are not conclusive, but are entitled to great weight.[a]

Whether or not the provisions of a statute can be waived by a contract entered into prior to the happening of the accident causing the injuries for which damages are claimed has been generally decided in the negative.[b] The laws prohibiting such contracts have received countenance in a number of cases.[c] In the Indiana and Iowa citations it was necessary to decide on the constitutionality of this particular provision of the statute. In the Mumford case the clause prohibiting contracts limiting liability was held applicable to a provision in a contract of employment limiting the time within which actions to recover damages for injuries might be brought, the provision being condemned as contrary to law. In the Quinn case

[a] Birmingham R. & Electric Co. *v.* Allen (1893), 99 Ala. 359, 13 So. 8; Colorado Milling & Elevator Co. *v.* Mitchell (1899), 26 Colo. 284, 58 Pac. 28.

[b] See page 14, above.

[c] Quinn *v.* New York, N. H. & H. R. Co. (1900), 175 Mass. 150, 55 N. E. 891; Pierce *v.* Van Dusen (1897), 78 Fed. 693; Minneapolis & St. L. R. Co. *v.* Herrick (1888), 127 U. S. 210, 8 Sup. Ct. 1176; Pittsburg, C., C. & St. L. R. Co. *v.* Montgomery (1898), 152 Ind. 1, 49 N. E. 582; Powell *v.* Sherwood (1901), 162 Mo. 605, 63 S. W. 485; Mumford *v.* Chicago, R. I. & P. R. Co. (1905), 128 Iowa 685, 104 N. W. 1135; Kansas P. R. Co. *v.* Peavey (1883), 29 Kan. 169, 44 Am. Rep. 630, approved in Western Furn. & Mfg. Co. *v.* Bloom (1907), 90 Pac. 821. (Kans.) Per contra, see Shaver *v.* Pennsylvania Co. (1896), 71 Fed. 931.

it was held that the statute was not contravened by an agreement in the contract of employment by which the employee undertook to make a careful examination of the place of work so that he might understand its dangers.

An agreement with the employer that the acceptance of benefits from a relief fund will act to prevent recovery in suits at law is not a violation of a provision forbidding contracts waiving a right to recover.(a) "It is nothing more or less than a contract for a choice between sources of compensation where but a single one existed; and it is the final choice—the acceptance of one against the other—that gives validity to the transaction."(b)

Double recovery will not be allowed, the provision of such contracts that prosecution of a suit to judgment or a compromise bars all claims to the benefit fund, fixing the status of any claimant thereunder. Thus a widow who sued as administratrix and recovered damages for the death of her husband for the benefit of their children was held barred under the contract, as the court ruled that the judgment accrued to her benefit as well.(c) But her receipt of benefits from the fund as widow does not bar subsequent action as administratrix for the benefit of a child or children.(b) A statute of Georgia, however, requires railroad companies to pay the agreed benefit on the death of an employee from accident, with the provision that the acceptance of such benefit shall not be a bar to action.

While express messengers may at common law waive their right of action against both their employer and the transporting company, such a contract was declared void as against the railroad under the Iowa statute forbidding contracts of employees waiving their rights to sue for damages.(d)

LAWS FOLLOWING THE BRITISH STATUTE.

The common law was construed much more unfavorably to the employee in England than in this country, a fact which led to such an amount of agitation for a statutory change that a liability law was enacted in 1880, taking effect January 1, 1881. This law, while of comparatively small present importance in Great Britain on account of the later "Compensation Acts," has had a considerable influence in this country, both its form and its judicial construction having been adopted more or less fully in a number of jurisdictions

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[a] Pittsburg, C., C. & St. L. R. Co. *v.* Cox (1896), 55 Ohio St. 497, 45 N. E. 641; Johnson v. Charleston & S. R. Co. (1899), 55 S. C. 152, 32 S. E. 2.

[b] Pittsburg, C., C. & St. L. R. Co. *v.* Moore (1899), 152 Ind. 345, 53 N. E. 290.

[c] Baltimore & O. R. Co. *v.* Ray (1905), 36 Ind. App. 430, 73 N. E. 942.

[d] O'Brien *v.* Chicago N. W. R. Co. (1902), 116 Fed. 502.

of the United States. These are, in the order of time, Alabama (1884–85), Massachusetts (1887), Colorado (1893), Indiana (1893: applicable only to railroads and other corporations, except municipal), New York (1902), and Porto Rico (1902). The Pennsylvania liability law of 1907 also embodies in a less formal manner the principal provisions of the act in so far as they relate to the defense of fellow-service.

The form of the Massachusetts law as it appears in the foregoing compilation is the result of a number of amendments, while the original Colorado statute (sections 1511a–1511e) is in some measure affected by the absolute abrogation of the fellow-servant doctrine by an act of the legislature of 1901 (sections 1511f, 1511g).

These laws (except those of Pennsylvania and Porto Rico, under which no action has been reported as yet) have all stood the test of constitutionality, except that of Indiana, as to which it has been ruled that the inclusion of other corporations than those engaged in railway service, while partnerships and individual employers are exempt, is unwarrantable and unconstitutional.(a) Under this construction, therefore, the law applies to railroads exclusively.

GENERAL PRINCIPLES OF CONSTRUCTION.

The rule that statutes in derogation of the common law will be strictly construed has generally been modified, in respect of the acts in hand, in favor of a liberal construction, in order that the purpose of the acts may be accomplished.(b) In the Alabama case cited the court said: "Being in derogation of the common law, the inference is that the terms of the act clearly import the changes intended, and their operation will not be enlarged by construction further than may be necessary to effectuate the manifest ends. Notwithstanding, a narrow and restrictive view of the act should not be taken. In its construction the court should consider its objects, have regard to the intentions of the legislature, and take a broad view of its provisions, commensurate with the proposed purposes."

In general it may be said that the effect of the act is not to create new causes of action nor to abrogate the general principles of common law. The determination of the relationship of the parties as employer and employee is unchanged.(c) Volunteers and servants going out of their scope of employment are therefore not aided by the laws;(d) nor, unless specifically included (as is done in the Colo-

[a] Bedford Quarries Co. *v.* Bough (1907), 80 N. E. 529.

[b] Ryalls *v.* Mechanics' Mills (1889), 150 Mass. 190, 22 N. E. 766; Hunt *v.* Conner (1901), 26 Ind. App. 41, 59 N. E. 50; Mobile & B. R. Co. *v.* Holborn (1888), 84 Ala. 133, 4 So. 146.

[c] Alabama G. S. R. Co. *v.* Carroll (1892), 97 Ala. 126.

[d] Propst *v.* Georgia P. R. Co. (1888), 83 Ala. 518, 3 So. 764; Mellor *v.* Merchants' Mfg. Co. (1890), 150 Mass. 362, 23 N. E. 100.

rado and Massachusetts statutes), do the acts embrace subcontractors or their employees.(a) Employees of receivers were held to be within the protection of the Indiana law.(b)

The acts do not attempt to codify the whole law on the subject, and they leave open some common-law defenses and some common-law liabilities.(c) A plaintiff seeking relief for injuries may find it under the common law rather than under the statute, as in some States the latter makes certain requirements as to notice, etc., and limits the amount recoverable, and one suing under the act must show that his case falls within its provisions.(d) The acts are frequently referred to as "fellow-servant laws," the principal feature being the abrogation as to the classes of employees enumerated, and under the conditions specified, of the defense of common employment,(d) so that the question of the importance or weight of this defense may decide whether an action should be brought under the statute or the common law. The defenses of assumed risks and of contributory negligence are at the most only modified, and are not taken away from the employer by these acts. The supreme court of Alabama allowed recovery under the liability law for the death of an employee resulting from the wanton negligence or willful wrong of an engineer, holding that even though the injured party may have been negligent, his negligence would be a defense only in connection with a purely negligent act of the employee inflicting the injury; but where the wrong was intentional, negligence on the part of the injured employee would not defeat recovery.(e) In the same case the theory that damages under this act are punitive was denied, the court ruling that they are compensatory only.

In no State are the common-law rights of an injured employee abrogated, and the requirement as to notice of action need not be given unless the suit is for damages recoverable only under the act. Thus in a New York case(f) it was held that the act only regulates procedure relative to the new or extended liability granted thereby; but the requirement as to timely giving of notice must be strictly observed.(g) The contents thereof need not be formally complete, however, if they are sufficient in fact to furnish substantial notice.(h) Where the statute contains a provision limiting the time within which

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[a] Scarborough *v.* Alabama M. R. Co. (1891), 94 Ala. 497, 10 So. 316.

[b] Hunt *v.* Conner, supra.

[c] Ryalls *v.* Mechanics' Mills, supra.

[d] Coffee *v.* N. Y. etc. R. Co. (1891), 155 Mass. 21, 28 N. E. 1128.

[e] Louisville & N. R. Co. *v.* York (1901), 128 Ala. 305, 30 So. 676.

[f] Gmaehle *v.* Rosenberg (1904), 178 N. Y. 147, 70 N. E. 411.

[g] Veginan *v.* Morse (1893), 160 Mass. 143, 35 N. E. 451.

[h] Brick *v.* Bosworth (1894), 162 Mass. 334, 39 N. E. 36.

action thereunder may be brought, it must be strictly observed, as, like notice, it is a condition imposed on the enforcement of a new remedy.

SPECIFIC PROVISIONS OF THE ACTS.

Defects in condition of ways, works, etc.

The principal purpose of this clause seems to have been to lay a foundation for the abrogation of the English fellow-service doctrine, and it does not greatly affect the rights of the employee at common law as it is construed in the United States.(a) The duty of providing and maintaining safe and suitable appliances here devolves on the employer, and is nondelegable. The condition of the place is the matter to be considered, and not the question of the employer's personal negligence as distinguished from that of an employee to whom he may have committed the duty of attending thereto. In other words, the employer is liable for defects, and it is not necessary, under this section, to aver that he was negligent.(b) As at common law, however, the defect must be the proximate cause of the injury,(c) and mere accident affords no ground of action.

The ground of action is, in all the States in the list under consideration with one exception, an injury caused by a defect in the condition of the instrumentality, following the phraseology of the English law. The exception is Pennsylvania, where the word "condition" is omitted, and the defect is to be in the works, plant, or machinery. The significance of this omission has not been determined by the Pennsylvania courts, but has been discussed in a Massachusetts case,(d) where it was held that a defect in the condition of machinery meant, not a defect that interfered with the working capacity, but one that affected the safety of employees. An English judge stated that the use of the word "condition" gave a broader meaning to the phrase than it would otherwise have, "but I do not think it is very much wider."(e) Not every accidental or temporary condition is included, but the defect must affect the permanent or quasi-permanent condition of the employer's establishment.(f)

The phrase "connected with or used in the business of the employer" is broad enough to include instrumentalities which the employer does not own, but which are, as a matter of fact, being used

a Ryalls *v.* Mechanics' Mills, supra.

b Lynch *v.* Allen (1893), 160 Mass. 248, 35 N. E. 550.

c Southern R. Co. *v.* Guyton (1899), 122 Ala. 231, 25 So. 34.

d Willey *v.* Boston E. L. Co. (1897), 168 Mass. 40, 46 N. E. 395.

e McGiffin *v.* Palmer's S. & I. Co. (1882), 10 Q. B. Div. 5.

f O'Connor *v.* Neal (1891), 153 Mass. 281, 26 N. E. 857; Kansas City, etc., R. Co. *v.* Burton (1892), 97 Ala. 240, 12 So. 88.

by him in the conduct of his business.(a) But no liability attaches where the employer has not the control of the agency causing the injury, as where he was a mere licensee using occasionally the track of a connecting railroad.(b) "The defect must be one which the employer has a right to remedy if he discovers it."(c)

What constitutes a defect is not defined by the acts themselves, and recourse is had to the principles of common law in making the determination. As already intimated, it depends on the question of suitableness for the intended use rather than on any unrelated quality of completeness. An unsuitableness of ways, works, or machinery for work intended to be done by means of them is a defect, although they are perfect of their kind, in good repair, and suitable for some work done in the employer's business other than the work in doing which their unsuitableness caused the injury complained of.(d) That the employer is not bound to procure the latest or best obtainable devices follows from the rules of common law, as does the fact that he is not liable where the employee fails to observe such precautions as a prudent man would observe in like circumstances of danger, or where by his own choice he diverts the instrumentality from its intended use to another use.

The expression as to knowledge of the defect practically brings the employer within the doctrine of the common law, which does not impute liability unless there is actual or constructive knowledge of the conditions occasioning the injury.(e)

The provision of the acts relating to the reporting of defects by the employee is not found in the Indiana and Pennsylvania laws. In the former State, however, the injured employee must be "in the exercise of due care and diligence," which is practically a statement of the conditions required for an action at common law, and would presumably be required in a suit under the Pennsylvania statute.

Failure to report known defects, unless the employer was known to have knowledge thereof otherwise, is a bar to action for resultant injuries;(f) or in other words, the statute does not exclude the application of the maxim, "Volenti non fit injuria."(g) This is therefore in accordance with the common-law rule that an employee accepts the risks of known and appreciated dangers. At common law, failure to report is held not the breach of a duty but an added reason

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[a] Coffee *v.* New York, etc., R. Co., supra.

[b] Trask *v.* Old Colony R. Co. (1892), 156 Mass. 298, 31 N. E. 6.

[c] Engel *v.* New York, etc., R. Co. (1893), 160 Mass. 260, 35 N. E. 547.

[d] Geloneck *v.* Steam Pump Co. (1896), 165 Mass. 202, 43 N. E. 85.

[e] Louisville & N. R. Co. *v.* Campbell (1892), 97 Ala. 147, 12 So. 574; Coffee *v.* New York, etc., R. Co., supra.

[f] Mobile & B. R. Co. *v.* Holborn, supra.

[g] O'Maley *v.* South Boston Gaslight Co. (1893), 158 Mass. 135, 32 N. E. 1119.

why an employee may not, under such circumstances, recover. The status of an employee who has given the required notice is not well settled. An English case(a) favored the position that an employee having given such notice was secure in his rights to recover, though later cases have left room for a consideration of the doctrine of volenti non fit injuria.(b)

Negligence of employees exercising superintendence.

Each of the laws of the group under consideration has a clause setting forth the liability of the employer for injury caused by the negligence of a person in authority over the injured employee, by reason of which the injury was inflicted. The scope of these provisions varies, and the test of rank is not uniformly held to, the Alabama law, for instance, allowing specifically for a dual capacity, while the Colorado law on its face only requires that the negligent act be that of a person whose sole or principal duty is that of superintendence. The Pennsylvania law enumerates as within the class of persons for whose acts the employer is liable, foremen and other persons in charge of works, plant, or machinery, and persons in charge of the particular work in which the employee was engaged at the time of his injury.

In the construction given by the courts it seems to be pretty uniformly established that the act complained of must itself be one of superintendence, and that the mere fact that it was the act of a person usually engaged in superintendence is not conclusive.(c)

An action may be brought, however, even where the injury resulted from the negligence of a superintendent while he was engaged in manual labor, assisting the plaintiff in his work,(d) and the fact that he labors occasionally or even a considerable portion of the time does not necessarily take away the employers' responsibility for him as a superintendent;(e) but the negligence must be in the matter of his duty as superintendent, and not as a laborer, to make the employer liable under this provision.

Who are superintendents is variously indicated, so far as the acts go. Persons whose sole or principal duty is superintendence; or, further,

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a Thomas *v.* Quartermaine (1887), 18 Q. B. Div. 685, 56 L. J. Q. B. N. S. 340.

b Yarmouth *v.* France (1887), 19 Q. B. Div. 687, 57 L. J. Q. B. N. S. 7; Smith *v.* Baker (1891), A. C. 325, 60 L. J. Q. B. N. S. 683.

c Whittaker *v.* Bent (1897), 167 Mass. 588, 46 N. E. 121; Dantzler *v.* De Bardeleben C. & I. Co. (1893), 101 Ala. 309, 14 So. 10; Louisville, N. A. & C. R. Co. *v.* Southwick (1896), 16 Ind. App. 486, 44 N. E. 263; Gallagher *v.* Newman (1908), 190 N. Y. 444, 83 N. E. 480. No case on this point from Colorado is at hand, but in view of the similarity of the provisions of the laws, the courts of that State would probably agree with the rulings of the Massachusetts courts.

d Kansas City, M. & B. R. Co. *v.* Burton (1892), 97 Ala. 240, 12 So. 88; Joseph *v.* George C. Whitney Co. (1900), 177 Mass. 176, 58 N. E. 639.

e Riou *v.* Rockport Granite Co. (1898), 171 Mass. 162, 50 N. E. 525; Crowley *v.* Cutting (1896), 165 Mass. 436, 43 N. E. 197.

persons acting as such with authority in their absence; or, as in Alabama, a person who has "any superintendence" intrusted to him, are designated. The terms used in the Pennsylvania law are noted above; the Indiana law omits the clause as to superintendents.

The difficulty of determining the point of superintendence of course arises only when the case involves a person below the rank of a general superintendent or manager. The foreman of a small gang of freight handlers,[a] and the foreman of a section gang on a railroad[b] have been held to be within the Massachusetts act. In general it is a matter for the jury and must be determined by the facts in the particular case. The fact that he is not expected or required to labor with his hands,[c] or that he receives higher wages than his associates[d] is evidence, but is not conclusive. Mere reputation as foreman, however, or the fact that he occasionally gives orders, will not be sufficient to charge the employer.[e]

That the employer's liability is enlarged by this clause was recognized in a New York case,[f] in which it was said that "it is clear that it [the act of 1902] has given an additional cause of action where it prescribes that the master shall be liable for the negligence of the superintendent or any person acting as such. At common law, while the master was liable for the fault of his alter ego to whom he intrusted the whole management of the work, with the power to employ and discharge servants, he was not liable for the negligence of foremen merely as such."

As to the phrasing of the Alabama law its supreme court has said that it was the apparent intent of the legislature to make the common employer liable when the injury complained of is caused by one who has any superintendence intrusted to him, whether or not he is engaged in manual labor.[g] The negligent act must, however, be one of superintendence.[g]

That the negligent superintendent need not be the superintendent of the injured employee is held in an Alabama case.[h] The negligence of a conductor running his train in disobedience to orders, thereby causing the death of a fireman on another train, was held, in a case under the New York law,[i] to be the act of a person not in su-

[a] Mahoney *v.* New York & N. E. R. Co. (1894), 160 Mass. 573, 36 N. E. 588.

[b] Davis *v.* New York, N. H. & H. R. Co. (1893), 159 Mass. 532, 34 N. E. 1070.

[c] Prendible *v.* Connecticut R. Mfg. Co. (1893), 160 Mass. 131, 35 N. E. 675; Carrol *v.* Wilcutt (1895), 163 Mass. 221, 39 N. E. 1016.

[d] O'Brien *v.* Look (1898), 171 Mass. 36, 50 N. E. 458.

[e] O'Brien *v.* Rideout (1894), 161 Mass. 170, 36 N. E. 792; Knight *v.* Overman Wheel Co. (1899), 174 Mass. 455, 54 N. E. 890.

[f] Gmaehle *v.* Rosenberg, supra. See also Harris *v.* Baltimore M. & E. Works (1907), 188 N. Y. 141, 80 N. E. 1028.

[g] Dantzler *v.* De Bardeleben C. & I. Co., supra.

[h] Kansas City, M. & B. R. Co. *v.* Burton, supra.

[i] Crosby *v.* Lehigh Valley R. Co. (1905), 137 Fed. 765 (C. C. A.).

perintendence, that duty devolving on the train dispatcher, whose proper orders had been disobeyed. No damages were allowed therefore under the act of 1902, though it seems probable that under the act of 1906 (chap. 657), recovery could be had.

Negligence of employees giving orders.

The laws of Alabama, Indiana, and Pennsylvania follow the English act in containing a clause mentioning injuries caused by the negligence of an employee giving orders to which the injured employee was bound to conform, and did conform, and making the employer liable if injuries resulted from the fact of his having so conformed. This clause is a recognition of the " superior servant " doctrine discussed in the first part of this article, and is independent of and in addition to the provisions relating to the negligence of superintendents.(a) It " distinguishes employees of a superior rank—employees clothed with authority and responsibility of the employer."(b) The question of engaging in manual labor is of little or no importance here, the test being one of actual authority, of orders within the scope of that authority, the obligation to obey, and the connection between obedience and the injury complained of. The first two of these three points practically fall within the scope of the principle of law that the acts of an employee outside the scope of his employment entail no obligation on the employer. This applies to the giving of orders as well as the carrying of them out. An Indiana case(c) apparently holds that in the absence of specific authority to do so, a superintendent or foreman can not appoint a temporary substitute to act in his absence and to have such authority as to bind the employer for the negligence of such substitute. The question at once arises as to whether the injured employee was bound to obey the temporary foreman's orders, or would disobedience be excused by the common employer on the ground of the lack of proper authority. If employers generally would not so excuse disobedience, as seems most probable, then to deny to the injured employee the right of action would seem unjust. Apart from this statute, however, the Indiana courts have held that foremen or bosses were, in general, fellow-servants of the workmen who were obliged to conform to their orders.(d) An employee who complies with the request of a person in charge of work, but not in control of him personally, has no redress against the employer in

[a] Kansas City, M. & B. R. Co. *v.* Burton, supra.

[b] Louisville, N. A. & C. R. Co. *v.* Wagner (1899), 153 Ind. 420, 53 N. E. 927.

[c] Hodges *v.* Standard Wheel Co. (1898), 152 Ind. 680, 52 N. E. 391; same case (1899), 54 N. E. 383.

[d] Brazil, &c., Coal Co. *v.* Cain (1884), 98 Ind. 282; Indiana Car Co. *v.* Parker (1885), 100 Ind. 181.

case of resulting injury.(a) But where there is authority, the employer is liable even though the order is to do an act prohibited by his rules, on the ground that the employee is not supposed to decide as to the right or wrong of the act when obeying his actual superior;(b) but not if he knows the act is outside the scope of the superior's authority.(c)

The requirement that there must be a causal connection between the negligent order and the injury complained of is in accord with the principles of liability already sufficiently discussed. The order itself may be given explicitly, or it may be inferable from circumstances;(d) but the latter ground will not extend to acts done in the discharge of general service, and growing out of the usual course of the plaintiff's employment.(d)

Acts in obedience to rules, etc.

The same States as named above, Alabama, Indiana, and Pennsylvania, have enacted a provision similar to that of the English act covering the acts and omissions (though the latter word is not found in the Pennsylvania statute) of any employee of the common employer, done or made in accord with rules and regulations of the employer, or with special instructions given by an authorized person. The proviso of the English act that restricts recovery to cases where there is an impropriety or defect in the rules, etc., is not found in the American enactments. It is probably not to be assumed, however, that the omission is significant of any different effect on the employer's liability than if they had been inserted, as to do so would entail liability without fault, and would tend to make the employer an insurer of the employee's safety, so long as he conformed to rules or instructions.(e) The law of Pennsylvania speaks of the act of a fellow-servant instead of "any person in the employ," etc., which is but the adoption of the construction of the Indiana law, where it was said that the language of the law was broad enough to include acts or omissions of the injured employee himself, but that it would be unjust to so read the law, as this would practically make the employer liable for pure accident.(e) The act was therefore construed as applying only to acts or omissions of fellow-servants. The omission of enjoined duties or disobedience to rules is not within the scope of this clause.(f) The clause seems to add little or nothing to the

[a] Propst *v.* Georgia P. R. Co. (1888), 83 Ala. 518, 3 So. 764.

[b] Marley *v.* Osborn (1894), 10 Times L. R. 388.

[c] Bunker *v.* Midland R. Co. (1883), 47 L. T. N. S. 476.

[d] Mobile & O. R. Co. *v.* George (1891), 94 Ala. 199, 10 So. 145.

[e] Dixon *v.* W. U. Tel. Co. (1895), 68 Fed. 630 (Indiana statute).

[f] Laughran *v.* Brewer (1897), 113 Ala. 509, 21 So. 415; Baltimore & O. S. W. R. Co. *v.* Little (1897), 149 Ind. 167, 48 N. E. 862.

employers' duty, under the common law, to maintain a proper system and to make and enforce suitable rules. The same doctrines as to knowledge of rules, condoning systematic or continuous violation, and of action in emergencies, as are set forth in connection with the discussion of that phase of the common law, are applicable here.

Acts of certain employees on railroads

All the laws of this group except those of Pennsylvania and New York enumerate certain classes of employees on railroads for whose negligence the employer is held liable in a different degree from that fixed by common law. In New York there is a separate section of later enactment which provides for practically the same classes of employees as are named in the English statute, which is in the main followed by the other States, though there is some variety in the language used.

The provisions of this clause are additional to those contained in the clause fixing liability for the negligent acts of superiors, and taken in connection therewith present a practical abrogation of the doctrine of fellow-service as a defense in cases of injury occurring by the negligence of those engaged in the operation of railroads.

It was said in an Alabama case (a) that the act in no wise relieves an employer from the common-law duty of using reasonable care in selecting employees; it increases his liability, rather, and makes him responsible for injuries sustained by an employee in consequence of the negligent act of employees of the designated classes, and that without reference to the care and diligence used in their selection.

Persons in charge or control include those who have the actual physical control of the instrumentalities named as well as those who are intrusted with work of a directive nature. Since, however, superintendence is included in the other clauses, it is understood that this provision relates rather to employees not included in them.(b) The control may be only temporary,(b) and the negligent manual operation may be performed under the direction of others.(c) Who is in charge of an engine, train, or other instrumentality at any particular time is a question of fact, to be determined by the circumstances of the particular case.(d) Nor need the duty be considered to rest entirely upon one person, since different duties may be assigned to different persons and each be charged with the conduct of the train.(e)

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a Culver *v.* Alabama M. R. Co. (1895), 108 Ala. 330, 18 So. 827.

b Birmingham R. & E. Co. *v.* Baylor (1893), 101 Ala. 488, 13 So. 793.

c Welch *v.* New York, etc., R. Co. (1900), 176 Mass. 393, 57 N. E. 668.

d Louisville & N. R. Co. *v.* Richardson (1893), 100 Ala. 232, 14 So. 209; Shea *v.* New York, N. H. & H. R. Co. (1899), 173 Mass. 177, 53 N. E. 396.

e Haysler *v.* Great Western R. Co. (1881), 72 Law T. 120; Caron *v.* Boston & A. R. Co. (1895), 164 Mass. 523, 42 N. E. 112.

But a superior who is actually present can not devolve the discharge of his duties upon an inferior so as to make the employer responsible for the latter's negligence.(a)

The words "signals" and "signal points" have been variously defined. The term "signals" includes mechanical devices (b) and torpedoes,(c) as well as signals transmitted by flags, lanterns, etc.(d) The Wisconsin courts have decided that an interlocking system used to prevent collisions is not a signal.(e) As to the Alabama law, court ruled that the comma between the words "signal" and "points" was not properly there, and construed the words as a phrase referring to apparatus and not to locality.(b) The English use of the word "points" instead of the term "switch" used in the United States has not been followed. Of the laws mentioned under this general head only those of Alabama and California contain the word "point." In that of the latter State the phrase "switch signal point" occurs, while the Porto Rican law speaks of a "signal switch." How these terms would be defined by the courts does not appear as yet. Switches are mentioned in a number of the laws, but in the Indiana law the only reference thereto is in the phrase "switch yard." The court refused to accept the suggestion that the legislative intent was to separate the words by a comma and so give them distinct meanings.(f) The same court held that a switch target, moving automatically with the opening and closing of the switch, is not a signal within the meaning of the act, but that it meant only signals complete within themselves and not subsidiary parts of other devices.(g)

The laws generally refer to locomotives or locomotive engines, that of Alabama separating the word "locomotive" from the word "engine" by a comma. The question therefore arose whether a stationary engine employed to move cars by means of a rope or cable came within the meaning of the act, but it was held that such an engine was not an engine on the track of a railway, and so was not included.(h) A pile driver used on the tracks of a railroad and geared to move by the application of its own power to the axle of the wheels on which it rests is not a locomotive under this act.(i) Attempts to make this clause cover the operation of railways on

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a Louisville & N. R. Co. *v.* Goss (1903), 137 Ala. 319, 34 So. 1007.

b Cogbill *v.* Louisville & N. R. Co. (1907), 44 So. 683. (Ala.)

c Cowen *v.* Ray (1901), 108 Fed. 320, 47 C. C. A. 352.

d Richmond & D. R. Co. *v.* Jones (1891), 92 Ala. 218, 9 So. 276.

e Chicago, St. P., M. & O. R. Co. *v.* Chicago, M. & St. P. R. Co. (1902), 113 Wis. 161, 89 N. W. 180.

f Baltimore & O. S. W. R. Co. *v.* Little (1897), 149 Ind. 167, 48 N. E. 862.

g Chicago, I. & L. R. Co. *v.* Barker (1908), 83 N. E. 369.

h Whatley *v.* Zenida Coal Co. (1899), 122 Ala. 118, 26 So. 124.

i Jarvis *v.* Hitch (1903), 161 Ind. 217, 67 N. E. 1057.

which electricity is used as a motive power have not received the sanction of the courts.(a)

Some of the statutes speak of charge or control of a train, others of a car or train, upon a railway. The latter phrase would seem to be explicit, though the Alabama courts hold that the word "car" is applicable also to hand cars.(b) Where the word "train" only is used, the question arises as to what constitutes a train. In a Massachusetts case it was held that a number of cars detached from the locomotive, and moving under the impetus given by the locomotive before being detached, formed a train within the meaning of the act.(c) The present law of that State is explicit on this point.

A dummy railroad has been held to be within the act,(d) as is also a temporary track used by a city for hauling gravel.(e) A locomotive in a roundhouse is not "on the track of a railway."(f)

In the fourth subdivision of section 7083 of the Indiana law, recovery is allowed for injuries on condition that the injured person was "obeying or conforming to the order of some superior at the time of such injury, having authority to direct." The attempt has been made to defeat by means of this clause the claims of employees who were injured while in the exercise of their routine duties, on the ground that they were not at the time working under orders; but this contention has not been allowed, the ground being taken that firemen, engineers, and workmen of like employments, were of necessity subordinates, and that action in the line of duty could only be action under the orders of superiors.(g)

All the laws of this group provide directly or by reference for the recovery of damages where death follows the injuries received. A number of them provide also for the assessment of damages proportioned to the degree of the negligence of the employer or of the employee for whose acts he is liable. This is not to be confused with the doctrine of comparative negligence embodied in a number of recent laws relating to railway employment.

THE COLORADO LAW OF 1901.

This law (sections 1511f, 1511g) is the first enactment of a legislature in a jurisdiction where the common law prevails to entirely

[a] Fallon *v.* West End St. R. Co. (1898), 171 Mass. 249, 50 N. E. 536; Indianapolis & G. R. T. Co. *v.* Andis (1904), 33 Ind. App. 625, 72 N. E. 145.

[b] Kansas City, M. & B. R. Co. *v.* Crocker (1892), 95 Ala. 412, 11 So. 262.

[c] Caron *v.* Boston & A. R. Co., supra.

[d] Birmingham R. & E. Co. *v.* Baylor (1893), 101 Ala. 488, 13 So. 793.

[e] Coughlin *v.* Cambridge (1896), 166 Mass. 268, 44 N. E. 218.

[f] Perry *v.* Old Colony R. Co. (1895), 164 Mass. 296, 41 N. E. 289.

[g] Cincinnati, H. & D. R. Co. *v.* Thiebaud (1900), 114 Fed. 918, (C. C. A.), citing Pittsburg, etc., R. Co. *v.* Montgomery (1898), 152 Ind. 1, 49 N. E. 582.

abolish the defense of coservice. Its scope and effect were set forth in a recent case (a) in which the supreme court of the State maintained the constitutionality of the law. In the course of its opinion the court stated that the act in question renders the employer liable for damages resulting from injuries to or death of an employee, caused by the negligence of a coemployee in the same manner, and to the same extent, as if the negligence causing the injury or death was that of the employer. Whether or not the employer is liable under this act must be determined by each particular case based on its provisions. It does not deprive him of any defense to the liability thereby imposed which, under the established rules of law, could be regarded as sufficient except his own lack of negligence. "For the purpose of providing for the safety and protection of employees in the service of a common employer, the law-making power has the undoubted authority to abrogate the exception to the general rule of respondeat superior in favor of the employer, and make him liable to one of his employees for damages caused by the negligence of another employee while acting within the scope of his employment, regardless of the fact that such employees are fellow-servants."

Thus, far-reaching as this law is in its particular field, the defenses of assumed risks and contributory negligence remain unaffected, nor is the employee in any way protected from the consequences of pure accident.

STATUTES AFFECTING EMPLOYMENT ON RAILROADS.

A very considerable number of States have laws applying specifically to the business of railroading, some of them applying to all employees, and some only to those engaged in the operation of the road. These laws range in effect from the slightest possible deviation from the principles of the common law to a complete abrogation of the defense of fellow-service, and important changes in those of contributory negligence and of assumed risks.

The most conspicuous instance of a statute that leaves the employee in practically the same status as is fixed by the common law is that of New Mexico, which, apart from the doubtful exception as to the application of the doctrine of contributory negligence after the employee has given notice of defects, would seem to better in no way the condition of an injured employee seeking damages for accidental injuries.

The constitutionality of laws relating to railroads only has been repeatedly decided in their favor in the face of contentions that they are discriminatory, not affording railroads equal protection with other

(a) Vindicator Consol. Gold Min. Co. *v.* Firstbrook (1906), 36 Colo., 499, 86 Pac. 313.

businesses, and that the laws deprive railroad companies of their property without due legal process, thus alleging that such laws are in conflict with the fourteenth amendment of the Constitution of the United States. The Kansas statute abrogating the defense of fellow-service was attacked in the United States Supreme Court,(a) which declared the law valid, using in part the following language, which shows the general grounds on which such laws are upheld:

"The greater part of all legislation is special, either in the objects sought to be ascertained by it, or in the extent of its application. Such legislation does not infringe upon the clause of the fourteenth amendment requiring equal protection of the laws, because it is special in its character. When legislation applies to particular bodies or associations, imposing upon them additional liabilities, it is not open to the objection that it denies to them the equal protection of the laws, if all persons brought under its influence are treated alike under the same conditions. The hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations, having for its object the protection of their employees as well as the safety of the public. The business of other corporations is not subject to similar dangers to their employees, and no objections, therefore, can be made to the legislation on the ground of its making an unjust discrimination. It meets a particular necessity, and all railroad corporations are, without distinction, made subject to the same liabilities."

LAWS AFFECTING THE LIABILITY OF OPERATORS OF MINES.

Besides the States whose laws embrace the working of mines in enactments of wider inclusion, two, Maryland and Missouri, have statutes that relate only to mining.

The law of Maryland applies only in case of death. It abrogates the defense of coservice, and provides for a proportionate compensation where the negligence of the decedent cooperated with that of the employer or his agents or employees.

The Missouri law declares a liability for all damages sustained by workmen on account of the negligence of any other agent or employee, but does not affect the defense of contributory negligence. Vice-principals and fellow-servants are defined, the same distinctions being followed as are observed in the law of this State relating to railroads. Indeed, except for the subject-matter, the laws are nearly identical. The mining law does not apply to designated employments above ground.

The reasoning of the courts applied to statutes relating only to railroad service, as set forth in the preceding division, may fairly be assumed to apply to laws of this class.

(a) Missouri P. R. Co. *v.* Mackey (1888), 127 U. S. 205, 8 Sup. Ct. 1161.

STATES WHOSE LAWS ABROGATE THE DEFENSE OF COMMON EMPLOYMENT.

Some grouping of the States is possible on the basis of the scope and effect of their laws. In the first group may be placed those whose laws abrogate the defense of fellow-service, either as relates to all employees in the industries included within their purview, most frequently railroad service only; or to designated classes of employees, as those engaged in the use and operation of railroads.

ARKANSAS.

Arkansas falls in this class by virtue of the act of 1907, which applies to coal mining as well as to the operation of railroads, and entirely abrogates the defense of fellow-service. The law repeals conflicting acts, without specifying any. It seems probable that this expression would work the repeal of sections 6658–6660, which embody the superior servant and departmental doctrines, thus restricting but not abrogating the application of the rule of coservice. These sections are retained in this compilation, however, until a judicial decision determines the point.

FLORIDA.

The doctrine of comparative negligence, set forth in section 3149, is held[a] not to apply to employees, who, by the next section, must be "without fault or negligence." If, however, the injury resulted from the performance of an act in which the injured employee had no part, the presumption is that he is free from fault, and that he may recover the same as if he were not an employee.[a]

GEORGIA.

The legislature of Georgia was one of the first if not the first in the Union to enact a law of the class under consideration. Section 2297 of the Code of 1895 was enacted in 1855, and is applicable to cases of injury not connected with the running of trains as well as to those which are.[b] Section 2321 is a statement of common-law principles;[c] but taken with sections 2297 and 2323, an employee who is injured by the negligence of coemployees may, if himself without fault, recover damages, since the risks he assumes are not those occasioned by the incompetence or negligence of other employees.[d] In order to clear itself, however, the company need only show that its

[a] Florida C. & P. R. Co. *v.* Mooney (1898), 40 Fla. 17, 24 So. 148; Duval *v.* Hunt (1894), 34 Fla. 85, 15 So. 876.

[b] Thompson *v.* Central R. & Bkg. Co. (1875), 54 Ga. 509.

[c] Campbell *v.* Atlanta & R. Air Line R. Co. (1873), 53 Ga. 488.

[d] Southern R. Co. *v.* Johnson (1901), 114 Ga. 329, 40 S. E. 235.

employees used ordinary and reasonable care, and it is not required to account for the accident.(a) The provisions of the law are held to apply to employees on street railways.(b)

The doctrine of comparative negligence expressed in section 2322 is construed as indicated for Florida, above, that State having followed Georgia in the enactment of its law. By section 3830, however, the legislature of Georgia has established a rule that permits recovery, even where the injured person has contributed by his negligence to the occasion of the accident that caused the injury. This section has been construed as applying to employees.(c)

As already stated, the general liability law is a statement of the principles of the common law and is, in effect, but a declaration that, except as to railroad employees, the rules of that law control.

IOWA.

The Iowa statute has been held to cover the operations of a construction company running gravel trains while building a railroad,(d) though the employees of independent contractors can not recover from a railroad company for injuries caused by the negligent acts of its employees.(e) Without extending references, the following sentences from a recent case(f) may be quoted as showing the construction adopted by the supreme court of the State:

"It has been construed as embracing within its protection all that class of employees whose employment 'exposes them to the peculiar dangers and perils attendant upon the use and operation of railroads.' Among others found to be entitled to recover have been the section hand, the section foreman, the shop hand, the clinker man, the detective, the gravel shoveler, and the snow shoveler, none of whom had any connection with the train service proper. The kind of labor in which the employee is engaged is not the test of his right of recovery so much as the fact whether, in the performance of that labor, he is, for the time being, exposed to the peculiar hazards which arise from or are connected with the use and operation of the road." Exposure to the risk of the operation of trains without necessarily being employed in the actual movement brings the employee within the protection of the law.(g)

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a Georgia R. & Bkg. Co. *v.* Hicks (1895), 95 Ga. 301, 22 S. E. 613.

b Savannah, T. & I. of H. R. *v.* Williams (1903), 117 Ga. 414, 43 S. E. 751.

c Atlanta Cotton Factory Co. *v.* Speer (1883), 69 Ga. 137; Hill *v.* Callahan (1888), 82 Ga. 109.

d McKnight *v.* Iowa & M. R. Const. Co. (1876), 43 Iowa 406.

e Ney *v.* Dubuque & S. C. R. Co. (1866), 20 Iowa 347.

f Jensen *v.* Omaha & St. L. R. Co. (1902), 115 Iowa 404, 88 N. W. 952.

g Pyne *v.* Chicago, B. & Q. R. Co. (1880), 54 Iowa 223, 6 N. W. 281; Smith *v.* Humeston & S. R. Co. (1889), 78 Iowa 583, 43 N. W. 545.

The limiting words, "such wrongs," are held to refer to the "neglect" and "mismanagement" mentioned, as well as to the "willful wrongs" named subsequently.(a) Nor does the fact that the negligent employee is subject to the control of the plaintiff bar the latter's right to recover.(b)

KANSAS.

The statute of Kansas, down to the first proviso, is a practical copy of the earliest law of Iowa, which was somewhat broader in terms than the Iowa law now in force. The added matter relates only to procedure and does not affect the liability of the employer otherwise. The same general line of construction as adopted by the courts of that State is followed, though the benefits of the statute extend further than do those of the Iowa law, which the Kansas supreme court declared to apply only where the plaintiff or the negligent employee, or both of them, are engaged in the use and operation of a railroad at the time of the accident causing the injury.(c) This restriction was held not to exist under the construction of the law of Kansas, and, in the case in hand, a section hand on whom a fellow-workman let a rail fall was allowed to recover damages.(c)

The statute applies to "every railroad company" in the State, which term is construed as including only corporations (which is the word used in the Iowa statute), and partnerships or individuals engaged in railroading are held not to fall within its scope.(d) The query at once arises, in view of the ruling of the Indiana and Mississippi courts that a law applying to corporations but not to firms and individuals engaged in the same lines of business is unconstitutional, how such a position is tenable.

No decision is at hand construing the provisions as to notice, added by amendments of 1903, 1905, and 1907, but according to the general rule previously set forth, they would demand strict observance as to time in order to bring a plaintiff within their terms, while a material rather than formal compliance as to contents of the notice would be required.(e)

MINNESOTA.

The law of this State, like that of Kansas, is held to apply, not to all employees of railroad companies, nor alone to those engaged in the movement of trains, but to all who are exposed to and subject to injuries by the dangers peculiar to the use and operation of rail-

[a] Malone *v.* Burlington, C. R. & N. R. Co. (1884), 65 Iowa 417, 21 N. W. 756.
[b] Houser *v.* Chicago, R. I. & P. R. Co. (1882), 60 Iowa 230, 14 N. W. 778.
[c] Union P. R. Co. *v.* Harris (1885), 33 Kan. 416, 6 Pac. 571.
[d] Beeson *v.* Busenbark (1890), 44 Kan. 669, 25 Pac. 48.
[e] Page 95, above.

roads.(a) Employees of receivers are within its protection,(b) as are those of a private corporation operating a logging railroad,(c) or a narrow-gauge road used in stripping earth in mining operations.(d) Work done in the construction of a yard for use in connection with a line in use by the public is not within the proviso that excepts new roads from the operation of the law.(e) Street railways are not within its purview,(f) though the operation of hand cars on steam roads is.(g)

MISSOURI.

While sections 2875 and 2876 are devoted to definitions of vice-principals and fellow-servants, in much the same language as is used in statutes of the next class considered, section 2873 clearly removes the defense of fellow-service in actions for injuries without reference to the relative grades of the plaintiff and the negligent employee, if the injury is received while the plaintiff is engaged in the work of operating a railroad. This provision includes all work that is directly necessary for running trains over a track, embracing that of section hands.(h) In the case cited a member of a section gang was injured by the negligence of other members of the gang in throwing timbers upon him while he was acting as watchman at a bridge over a street. The constitutionality of the law and its application to employees of a receiver of a railroad company were upheld in a recent case.(i)

The term "railroad corporation" used in this statute is taken to mean all companies, and individuals as well, owning or operating railroads.(j) The act does not include street railways within its scope.(k) The act of 1907 relating to mining has been, in the absence of decisions, sufficiently noticed.(l)

MONTANA.

Chapter 1 of the acts of 1905 of this State presents a brief but comprehensive enactment abrogating the doctrine of fellow-service

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a Pearson *v.* Chicago, M. & St. P. R. Co. (1891), 47 Minn. 9, 49 N. W. 302.

b Mikkelson *v.* Truesdale (1895), 63 Minn. 137, 65 N. W. 260.

c Schus *v.* Powers-Simpson Co. (1902), 85 Minn. 447, 89 N. W. 68.

d Minnesota Iron Co. *v.* Kline (1905), 199 U. S. 593, 26 Sup. 159.

e Moran *v.* Eastern R. Co. (1892), 48 Minn. 46, 50 N. W. 930.

f Funk *v.* St. Paul City R. Co. (1895), 61 Minn. 435, 63 N. W. 1099.

g Steffenson *v.* Chicago, M. & St. P. R. Co. (1891), 45 Minn. 355, 47 N. W. 1068.

h Callahan *v.* Railway Co. (1902), 170 Mo. 473, 71 S. W. 208.

i Powell *v.* Sherwood (1901), 162 Mo. 605, 63 S. W. 485.

j Ib.; citing section 2666, R. S.

k Sams *v.* St. Louis & M. R. Co. (1903), 174 Mo. 53, 73 S. W. 686.

l See page 106, above.

in cases of injuries negligently inflicted in connection with the use and operation of railroads. No case is at hand under this act, but its construction would doubtless be similar to that of the Iowa statute, the language of which it resembles.

Sections 2660 to 2662 make no addition to the provisions of the common law.

NEBRASKA.

The act of 1907 is a restricted law, applicable only to employees who, at the time of injury, are engaged in construction or repair work, or in the use and operation of an engine, car, or train. Within these limits the defense of coservice is abolished. The provision as to defects is practically a statement of the common-law liability, closely resembling the corresponding provisions in the English act and those following it, to the discussion of which reference may be made.[a] The provision as to comparative negligence looks toward the alleviation of the hardships of those cases in which heretofore any contributing negligence has been a bar to recovery.

NEVADA.

The law of 1907 is much broader in its scope than that of Nebraska, noted above, in the inclusion of other industries than railroading, as well as of all employees in the included employments without restriction. In other respects the two laws are similar.

NORTH CAROLINA.

The law of this State is embodied in the Code of 1905, since, though printed as a private law, it is, by its contents and effect, a public statute, and is constitutional.[b] It abolishes entirely the defense of coservice, so that questions of control or rank are immaterial.[c] Where an injury is the result of a defective engine or appliance, the defense of assumed risks is taken away from the employer.[d] In a case involving the application of the law to a private road owned and used by a lumber company, the act was held to apply,[e] the court remarking that it would apply to a street railway as well.

NORTH DAKOTA.

The law of 1907 abrogates the defense of fellow-service in actions for injuries to employees of common carriers, and requires actions

[a] See pages 96–98, above.

[b] Hancock *v.* Norfolk & W. R. Co. (1899), 124 N. C. 222, 32 S. E. 679.

[c] Kinney *v.* North Carolina R. Co. (1898), 122 N. C. 961, 30 S. E. 313.

[d] Coley *v.* North Carolina R. Co. (1901), 128 N. C. 534, 39 S. E. 43.

[e] Hemphill *v.* Buck Creek Lumber Co. (1906), 141 N. C. 487, 54 S. E. 420.

thereunder to be brought within one year from the time the cause of action accrued. In other respects it resembles the Nebraska statute.

OKLAHOMA.

The constitution of this State abrogates completely the defense of fellow-service where injuries occur to any employee of steam or electric railroad companies, of mine operators, or of the receivers of such employers. It also gives to the jury all questions as to assumed risks and contributory negligence.

SOUTH DAKOTA.

Chapter 219, Acts of 1907, is identical in its main provisions with the act of North Dakota of the same year.

TEXAS.

The law in its present form is a modification of an earlier statute, the changes being for the purpose of meeting judicial suggestions or rulings that the old law did not apply to receiverships nor to the operation of street railways. The present law names both as within its purview. The act resembles the law of Missouri in that while its first section entirely removes the defense of fellow-service in actions by certain classes of employees, succeeding sections are devoted to definitions of vice-principals and fellow-servants along the lines of the superior service and departmental doctrines. Under this law coservice was not allowed as a defense where a switchman was injured by the negligence of his foreman, the making up of a train being a part of the operation of a railroad.(a) The operation of a hand car is held to be within the scope of the law.(b) In another case involving the use of hand cars, however, the supreme court held the company liable for injuries to a member of a section gang who was carrying tools to the tool house, while other members were taking tools in on a hand car and ran against the plaintiff, causing the injuries complained of, not on the ground that the men were operating a car, but on the ground that they were engaged on a different piece of work.(c) On the same ground a bridge gang of five men, divided into two gangs for the purpose of moving bales of cotton to allow the repair of the company's cotton platform at a station, were held not to be employed on the same piece of work, where each gang moved its own bale independent of the other.(d) It will be observed that sections 2 and 3 relate to employees generally in the service of a railroad company, and are not restricted in their application, as is the first section.

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a Missouri, K. & T. R. Co. *v.* Baker (1900), 58 S. W. 964.

b Perez *v.* San Antonio & A. P. R. Co. (1902), 67 S. W. 137; Texas & P. R. Co. *v.* Smith (1902), 114 Fed. 728 (C. C. A.)

c Long *v.* Chicago, R. I. & T. R. Co. (1900), 94 Tex. 53, 57 S. W. 802.

d International & G. N. R. Co. *v.* Still (1905), 88 S. W. 257.

The contention that a section foreman is a vice-principal under section 2 and that no recovery could be had on account of injuries received by him because of the negligence of the men under his control was not allowed as being against the provisions of section 1 that liability attaches for injuries received in connection with the operation of cars, the injury in the case in hand being caused by the negligent operation of a hand car.[a] The private road of a lumber company is within the scope of the law.[b] A laborer unloading telephone poles from a car moving on the track so as to distribute the poles at proper intervals was held to be employed in operating the cars.[c] A railroad company is liable for the negligent acts of the foreman of a gang of men working in a yard, where the men under him followed his instructions which he assisted in carrying out, though his negligence consisted in the improper performance of an act of manual labor, he being despite this fact a vice-principal.[d] The same ruling as to liability was made where a foreman of a section gang had failed of his duty to keep the track clear, leaving an obstacle which was hurled by a passing train against a member of his gang.[e]

Accepting the cases given as illustrative of the scope of sections 2 and 3, it is evident that, taking them with section 1 of the act, the defense of common service is restricted to very narrow limits. The statute expressly declares that it does not modify the defense of contributory negligence. There is a later law (chapter 163, acts of 1905) which relates to the third principal defense in actions for injuries—that of assumed risks. As this applies only to suits by employees of the same classes as are embraced in the act of 1897, it will be noticed here.

A case[f] arose under this act in which it was held that continuing in service while an instrumentality was retained that was being superseded by the employer by a safer device was a case within the scope of the act, and that the employee did not assume the risk. The question as to the constitutionality of the act was answered in the affirmative.

WISCONSIN.

The Wisconsin statute, in its amended form, presents essentially the same conditions as are found in the laws of North and South Dakota, and is one of the group of five States which last year embodied a provision as to comparative negligence in laws relating to employers' liability. The additions found in the Wisconsin statute

[a] Texas & P. R. Co. *v.* Smith, supra.
[b] Lodwick Lumber Co. *v.* Taylor (1905), 87 S. W. 358.
[c] Mounce *v.* Lodwick Lumber Co. (1906), 91 S. W. 240.
[d] Missouri, K. & T. R. Co. *v.* Dean (1905), 89 S. W. 797.
[e] Texas & P. R. Co. *v.* Carlin (1903), 189 U. S. 354, 23 Sup. Ct. 585.
[f] El Paso & S. W. R. Co. *v.* Foth (1907), 100 S. W. 171.

relate chiefly to pleading and an explicit statement of the classes of employees affected. Employees in shops and offices are excluded from the operation of the law, and the limitation of one year found in the Dakota statutes is omitted. Section 1816, prior to amendment, was held not to apply to logging railroads,[a] and the same construction would probably be put on the present law.

STATES WHOSE LAWS MODIFY THE DEFENSE OF COMMON EMPLOYMENT.

Another group of States is made up of those whose laws, without abrogating the defense of coservice generally, modify it by incorporating into their statutes provisions as to the responsibility of the employer for the acts of superior servants or of those in different departments from the injured employee; or, in other words, statedly adopting the "superior servant" and "departmental" doctrines which were set forth as being followed in certain jurisdictions under the common law.

CALIFORNIA.

The amended form of section 1970 of the civil code of California removes this State from the class of those whose statutes were a mere statement of the common law to the group under present consideration. There is, of course, no line of State decisions available for a determination of the classes of superiors or of departmental boundaries, as the amendment was enacted only last year. The construction of similar statutes in other States, however, and the lines indicated by the common-law decisions will be found suggestive. The provisions of the section extend by its terms to industries generally. The clauses on the subjects of ordinary risks and knowledge are but a statement of common-law principles.

MISSISSIPPI.

The provisions of section 4056 of the Code of 1906 and of section 193 of the State constitution are the same, except that the last sentence of the constitutional provision is not reproduced in the statute. In connection with this sentence it may be noted that the legislature undertook to enact a law (chapter 87, Acts of 1896; chapter 66, Acts of 1898) in accordance therewith, extending the application of the law to corporations generally. This was declared a violation of the fourteenth amendment of the Constitution of the United States on the ground that there was no proper classification of industries on the basis of their dangers or otherwise, and that it discriminated between

[a] McKivergan *v.* Alexander & E. Lumber Co. (1905), 124 Wis. 60, 102 N. W. 332.

employing corporations and individuals engaged in similar lines of business.(a)

In a case under the provisions of the constitution (b) it was said that by the words, "superior agent or officer," were meant persons "of the sort well known as such, and any other person in the company's service, by whatever name, who may be intrusted with the right to control and direct the services of others according to his discretion and judgment—one to whom is committed the direction or control of others, for the accomplishment of some end dependent on his independent orders, born of the occasion, sprung from him as director, and not consisting of the mere execution of routine duties in pursuance of fixed rules by various employees, each charged with certain parts in the general performance." In this case it was held that a locomotive engineer was not the superior officer of a brakeman on the train. Nor was the foreman of a switch crew held to be the superior officer of the men under him within the meaning of the law where the work is the mere discharge of routine duties.(c) In this case, the court said that under other circumstances the foreman might be the company's agent, so that the question seems to need adjudication for each particular case—a marked defect in this doctrine, as has already appeared. Departmental bounds are little if any easier of determination. Thus a locomotive fireman is clearly in a different department from a telegraph operator;(d) but an action by a section hand, injured on account of the negligence of a draw tender at a bridge failed on the ground that the latter was not the plaintiff's superior, the question of difference of departments being apparently overlooked.(e)

The employee of a construction company using cars in its work is not within the protection of the law.(f)

OHIO.

Section 3365–20 is hardly classifiable as an employers' liability law in the sense in which such laws have been discussed here, since it relates chiefly to contracts limiting that liability as it exists at common law. The next section goes somewhat further, though it operates by changing the rules of evidence rather than by enlarging the duty of the employer.(g) It does not affect the defenses of contributory negligence or assumed risks.(g) The presumption of knowledge which is chargeable to the company by this section can

a Ballard *v.* Mississippi Cotton Oil Co. (1903), 81 Miss. 507, 34 So. 533.
b Evans *v.* Louisville, N. O. & T. R. Co. (1893), 70 Miss. 527, 12 So. 581.
c Fenwick *v.* Illinois C. R. Co. (1900), 100 Fed. 247, 40 C. C. A. 369.
d Illinois C. R. Co. *v.* Hunter (1893), 70 Miss. 471, 12 So. 482.
e Illinois C. R. Co. *v.* Bishop, (1899), 76 Miss. 758, 25 So. 867.
f Bradford Const. Co. *v.* Heflin (1906), 88 Miss. 314, 42 So. 174.
g Hesse *v.* Columbus, S. & H. R. Co. (1898), 58 Ohio St. 167, 50 N. E. 354.

be overcome only by actual proof and not by proof of facts that merely raise an opposite presumption.(a) Thus it was held that the employment of a competent inspector was not evidence of the discharge of the duty of inspection sufficient to rebut the presumption of negligence arising from the fact of an injury occasioned by a defect.(b)

The absence of a customary appliance comes under the statute the same as would a defective appliance.(c)

Section 3365–22 embodies the superior servant doctrine, which prevailed in Ohio under the construction put upon the common law by the courts of that State,(d) and also presents, in a modified and rather peculiar form, the departmental doctrine. The constitutionality of this section and its application to employees of receivers were maintained in a case that was before the United States circuit court of appeals.(e) The law makes superior servants in any department the superior of an employee in a different department who has no power to direct or control in his own department. Thus a chief inspector of cars, having others under him, is the superior of a brakeman on a train;(f) but a sole inspector, without subordinates, is the fellow-servant of a brakeman.(g) An engineer on a locomotive, having control of his fireman, is not the fellow-servant of a brakeman on another train, who has control of no one.(h) A train dispatcher is the superior of a locomotive engineer, but a telegraph operator, whose duty it is merely to transmit messages, is the fellow-servant of such engineer.(i)

The difficulty of construing and applying a law making provision for the superior servant doctrine and the uncertainties involved in the application of the principles of negligence and contributory negligence have been adverted to heretofore. They find a striking illustration in a long-contested case which arose under the provisions of this section, and which involves both these points.(j) This was a case in which a locomotive fireman was killed by the negligence, as alleged, of the engineer on another train. The case was heard in the United States circuit court, and a judgment in favor of the plaintiff was rendered. The railroad company appealed to the court of appeals, which reversed the judgment on the ground that, on the face of the record, Kane had been guilty of contributory negligence. A

[a] Columbus, H. V. & T. R. Co. *v.* Erick (1894), 51 Ohio St. 146, 37 N. E. 128.
[b] Felton *v.* Bullard (1899), 94 Fed. 781.
[c] Crumley *v.* Cincinnati, H. & D. R. Co. (1896), 12 Ohio C. C. 164.
[d] See pages 36 and 37, above.
[e] Pierce *v.* Van Dusen (1897), 78 Fed. 693, 24 C. C. A. 280.
[f] Columbus, etc., R. Co. *v.* Erick, supra.
[g] Felton *v.* Bullard, supra.
[h] Cincinnati, H. & D. R. Co. *v.* Margrat (1894), 51 Ohio St. 130, 37 N. E. 11.
[i] Baltimore & O. R. Co. *v.* Camp (1895), 65 Fed. 952, 13 C. C. A. 233.
[j] Kane *v.* Erie R. Co. (1906), 142 Fed. 682. (C. C. A.)

second trial in the circuit court was had, when the section under consideration was declared to be unconstitutional as contravening the provisions of section 2 of article 1 of the constitution of the State, which declares that government is instituted for the equal protection and benefit of the people. The court held that the provisions of the section benefited only such employees in each department as had no subordinates, and that by placing on each train a boy who should be under the charge and control of every other employee, the company could avoid liability for injuries to all other employees.

From this ruling Kane's administratrix appealed, bringing the case a second time to the court of appeals, which denied the premises of the circuit court, held the law constitutional, and remanded the case. On the third trial in the circuit court the right of recovery was denied on two grounds, one that though the negligent engineer was in charge of his fireman, he was himself subordinate to the conductor of his train, and was not therefore a superior servant within the meaning of the statute; the second ground was that Kane had been guilty of contributory negligence.

Coming to its third hearing in the court of appeals the case was reversed on both points. Superior servants were held to be not only those who had entire control of a branch or department, but the term includes those who may be in control of but a single employee. Three factors were held to be involved in a case like the present—a separate branch or department, a superior therein, and a subordinate in another branch or department. Separateness of departments is essential in this case, as an engineer, though the superior of his fireman, is a fellow-servant of a brakeman in the same train, though the brakeman is the superior of no one.[a]

Kane had been found guilty of contributory negligence in the first trial by the court of appeals because of his violation of a rule that was put in evidence by the company. Evidence was submitted at the third trial before the circuit court that the rule in question had been in fact abrogated, and it was on the weight of this evidence that the court of appeals reversed the court below on this point. The case was again remanded to the circuit court for proceedings not inconsistent with the opinion given by the court of appeals, but the results of such proceedings, if any, are not at hand.

OREGON.

The act of this State embodies the doctrines of superior service, of different departments, and of liability for the acts of designated classes of employees. The defenses of assumed risks and contribu-

[a] Railway Co. *v.* Shanower (1904), 70 Ohio St. 166, 71 N. E. 279. (An engineer on one train and the brakeman on another are not fellow-servants. See the Margrat case, above.)

tory negligence are affected by the clause as to knowledge of defects not being of itself a bar to actions for injuries.

SOUTH CAROLINA.

The constitutional provision as to liability presents practically the same features as are found in the law of Oregon. Engineers and conductors voluntarily operating cars or engines known to be unsafe are, by the statutes, outside of the protection of the clause as to knowledge. While an engineer on a locomotive is a vice-principal of his fireman, he is a fellow-servant of a brakeman on the same train.(a) Section 2848 of the Civil Code gives to employees of street railway companies the same rights as are secured by the constitution of the State to railroad employees.

UTAH.

This State has enacted a law applying to every class of employment, embodying the superior servant and departmental doctrines. The act is constitutional.(b) Whether miners in different tunnels are or are not fellow-servants is a question of fact for the jury.(b) The statute charges the employer with liability for the negligent acts of vice-principals whether such acts were acts of superintendence or otherwise, and, if performed in the discharge of their duties as employees, whether committed while in the exercise of their authority or not.(c)

VIRGINIA.

The section of the constitution relating to the liability of employers and the law on the same subject present features quite similar to the law of Oregon. It relates only to railroad employments, and enacts the superior servant and departmental doctrines, and fixes liability for the negligent acts of certain classes of employees. The rule of law that knowledge of defects would charge the employee with the assumption of risks is abrogated. The defense of contributory negligence is expressly retained, except in so far as modified by the provisions of the act.

The clause as to knowledge not being a bar to action was copied from the Mississippi constitution,(d) and was held, in accordance with the construction placed thereon by the Mississippi Courts,(e) not to destroy the defense of contributory negligence. Knowledge of defects was held to be still a factor in determining whether the employee acted with a proper degree of caution under the circumstances. Recklessness and carelessness are not licensed by this provision.(e)

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[a] Pagan *v.* Southern R. Co. (1907), 59 S. E. 32.

[b] Dryburg *v.* Mercur Gold Min. & Mill Co. (1898), 18 Utah 410, 55 Pac. 367.

[c] Southern Pacific Co. *v.* Schoer (1902), 114 Fed. 466 (C. C. A.).

[d] Norfolk & W. R. Co. *v.* Cheatwood's Adm'x. (1905), 49 S. E. 489.

[e] Buckner *v.* Richmond & D. R. Co. (1895), 72 Miss. 873, 18 So. 449.

EMPLOYERS' LIABILITY UNDER THE CIVIL LAW.

The articles of the Civil Code of Louisiana reproduced in the above compilation closely follow the Code Napoleon. As this law is applied in the jurisdictions unaffected by the English common law, it presents some differences therefrom, chiefly in favor of the employee. In dangerous employments the master is obligated to take "every precaution which can be taken" to prevent accidents—"to protect his employees by the best possible means, and even, to some extent, against their own imprudence." The defense of fellow-service is not accepted in such jurisdictions, and that of contributory negligence is modified so as to allow recovery in a proportionate amount unless the injured employee's negligence was the sole cause of his injury. Risks are held to be assumed as under the common law.

It can not be said, however, that these principles prevail in Louisiana, as its jurisprudence is affected by the general law of the country and especially by the decisions of the Supreme Court of the United States. The situation may be illustrated by a case([a]) in which damages were allowed for an injury to an employee. The court cited these articles of the Civil Code, holding that under them the plaintiff was entitled to recovery, "and likewise under the construction of the general law applicable to master and servant."

LAWS AFFECTING THE DEFENSES OF ASSUMPTION OF RISKS AND CONTRIBUTORY NEGLIGENCE.

The notes following the reproduced laws of a number of the States, and certain laws which, in other cases, stand as the only statutory modification of the common-law liability of the employer, are generally to the effect that where enactments relating to specified industries or employments are not complied with, a different degree of liability attaches, or one or both the defenses above named are withdrawn.

General laws affecting the defense of assumption of risks under designated conditions have been enacted by the legislatures of Iowa (Acts of 1907, chapter 181), and of Ohio (Acts of 1904, act, page 547). In the absence of judicial decisions on these statutes, it will be sufficient to point out their similarity to the Texas statute which was held constitutional in the Foth case.([b]) The numerous provisions as to restrictive contracts are sufficiently discussed in the early paragraphs of this section.([c])

In concluding this discussion it may not be inappropriate to revert to the statement made in connection with the act of Colorado of 1901, that even the entire abrogation of the doctrine of fellow-service leaves

[a] James *v.* Rapides Lumber Co. (1898), 23 So. 469.

[b] See page 113, above.

[c] See pages 92 and 93, above.

the employee to bear all the consequences of inevitable accident, or the "trade risk," as it is frequently called;(a) also that laws effecting a modification of the doctrine are of small avail as affording certainty of relief since so much is dependent on the details of circumstance surrounding each case. Of this the case of Kane *v.* Erie R. Co., noted above, is an instance; while of the law of Texas, which abrogates entirely for certain classes of employees and restricts closely for others this same defense, it may be said that it is the basis of an amount of litigation that is probably not surpassed by any law of its kind.

Statistics of 46,000 industrial accidents collated by the German imperial insurance office for 1897 show that 29.89 per cent of the accidents were due to fault or negligence of the injured employee, 16.81 per cent to that of the employer, 4.66 per cent to the joint negligence of the employer and the injured employee, 5.28 per cent to that of coemployees and outside parties, 1.31 per cent to the "Act of God," etc., and 42.05 per cent to inevitable accidents connected with the employment. The impossibility of securing to the workman the needed protection by a mere grant of right of action for injuries for which the employer can rightly be charged is evident from a consideration of these statistics, as well as from the discussion of the principles of law set forth above. The employer, who is the agent of the public in the matter of production and transportation, should be charged with the duty of so administering industrial undertakings that the burden of the trade risk shall fall on the industry at large, and not be concentrated on the weakest point—on the individual workman, disabled for service through the mere fact of his employment at the time and place of the occurrence of an inevitable accident, or on the widow and children of such workman, if the accident results fatally.

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[a] An instruction to a jury is correct which states that if a plaintiff's injuries were the direct results of an accident incident to the business in which he was engaged, he can not recover. Mobile & O. R. Co. *v.* George (1891), 94 Ala. 199, 10 So. 145.

SUMMARY OF FOREIGN WORKMEN'S COMPENSATION ACTS.

By the term "workmen's compensation laws" are meant enactments which embody the principle that the workman is entitled to compensation for injuries received in the course of his employment. Such laws have been enacted in twenty-two foreign States.

Usually the injuries must cause disablement for a specified number of days or weeks before compensation becomes due. The employer may usually be relieved from the payment of compensation if he can prove that the injury was caused intentionally or by willful misconduct, or in some countries by the gross negligence of the injured person or during the performance of an illegal act.

The industries usually covered by the acts are manufacturing, mining and quarrying, transportation, building and engineering work, and other employments involving more or less hazard. In Belgium, France, and Great Britain the laws apply to practically all employments. In Austria, Belgium, Denmark, Finland, Germany, Italy, Luxemburg, Netherlands, Norway, Russia, Spain, and Sweden only workmen engaged in actual manual work, and in some cases those exposed to the same risks, such as overseers and technical experts, come within the operations of the law. On the other hand, in France, Great Britain, the British colonies, and Hungary the laws apply to salaried employees and workmen equally. Overseers and technical experts earning more than a prescribed amount are excluded in Belgium, Denmark, Germany, Great Britain, Italy, Luxemburg, and Russia. Employees of the state, provincial, and local administrations usually come within the provisions of the acts.

The entire burden rests upon the employer in all but four countries, Austria, Germany, Hungary, and Luxemburg, where the employees bear part of the expense. The laws in every case fix the compensation to be paid. Except in Sweden the compensation is based upon the wages of the injured person. It consists of medical and surgical treatment and periodical allowances for temporary disability, and annual pensions or lump-sum payments for permanent disability or death.

In most countries employers may contract with state or private insurance institutions for meeting the payments. In a number of countries such transfer is obligatory. Provision is usually made for the protection of beneficiaries in case of insolvency of employers.

The acts of nearly all of the countries are framed with the view of obviating the necessity for instituting legal proceedings. If disputes arise the acts specify the necessary procedure for settlement by special arbitration tribunals or by ordinary law courts.

The following summary gives the most important features of the workmen's compensation acts of all countries:

AUSTRIA.

Date of enactment. December 28, 1887, in effect November 1, 1889. Amendatory acts, March 30, 1888, April 4 and July 28, 1889, January 17, 1890, December 30, 1891, September 17, 1892, July 20, 1894, and July 12, 1902.

Injuries compensated. All injuries causing death or disability for more than three days received in the course of employment, unless caused intentionally.

Industries covered. Mining, quarrying, stonecutting, manufacturing, building trades, railways, transportation on inland waters, storage, theaters, chimney sweeping, street cleaning, building cleaning, sewer cleaning, dredging, well digging, structural iron working, etc.; agricultural and forestry establishments using machinery.

Persons compensated. All workmen and technical officials regularly employed, but in agriculture and forestry only employees exposed to machinery.

Government employees. Act applies to government employees unless an equal or more favorable compensation is provided by other laws.

Burden of payment. Medical and surgical treatment for twenty weeks and compensation for four weeks of disability paid by sick funds, to which employers contribute one-third and employees two-thirds. Compensation for disability after fourth week, and for death, paid by territorial insurance associations, to which employees contribute 10 per cent and employers 90 per cent.

Compensation for death:

(*a*) Funeral expenses not to exceed 25 florins ($10.15).

(*b*) Pensions to members of family, not to exceed 50 per cent of earnings of deceased, to—

Widow, 20 per cent until death or remarriage; in the latter case a lump sum equal to three annual payments; to dependent widower, 20 per cent during disability.

Each legitimate child, 15 years of age or under, 15 per cent when one parent survives and 20 per cent when neither survives; to each illegitimate child, 15 years of age or under, 10 per cent; pensions of widow (or widower) and children reduced proportionately if they aggregate over 50 per cent.

(*c*) When pensions to above heirs do not reach 50 per cent, dependent heirs in ascending line receive pensions, not to exceed 20 per cent of earnings of deceased, parents taking precedence over grandparents.

(*d*) In computing pensions, the excess of the annual earnings over 1,200 florins ($487.20) is not considered.

Compensation for disability:

(*a*) Medical and surgical attendance for 20 weeks, paid by sick benefit fund.

(*b*) For total temporary or permanent disability, 60 per cent of average daily wages of insured workmen in the locality, paid by sick benefit funds, from first to twenty-eighth day; and 60 per cent of average annual earnings of injured person, after twenty-eighth day, paid by territorial accident insurance institutions.

(*c*) For partial temporary or permanent disability, benefits consist of a portion of above allowance, but may not exceed 50 per cent of average annual earnings.

(*d*) In computing payments, the excess of annual earnings over 1,200 florins ($487.20) is not considered.

Revision of compensation. Reconsideration of the case may be undertaken by the insurance association of its own will, or upon petition.

Insurance. Payments are met by mutual insurance associations of employers in which all employees are required to be insured. The country is divided into districts, with a separate association for each district.

Security of payments. Operations of the insurance associations are conducted under the supervision of the minister of interior, who may increase the assessments.

Settlement of disputes. Disputes are settled by arbitration courts composed of a judicial officer appointed by the minister of justice, two experts appointed by the minister of the interior, and one representative each of the employers and the employees.

BELGIUM.

Date of enactment. December 24, 1903, in effect July 1, 1905.

Injuries compensated. All injuries by accident to employees in the course of and by reason of the execution of the labor contract, causing death or disability for over one week, unless intentionally brought on by the person injured.

Industries covered. Practically all establishments in mining, quarrying, forestry work, manufacturing, building and engineering work, transportation, and telephone and telegraph services; establishments using mechanical motive power; industrial establishments employing five or more persons; agricultural and commercial establishments employing three or more persons; industries designated by royal decree as dangerous. Other industries at option of employer.

Persons compensated. Workmen and apprentices, and salaried employees exposed to the same risks as workmen whose annual salaries do not exceed 2,400 francs ($463.20).

Government employees. Act covers employees of any public establishment engaged in industries enumerated above.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death:

(*a*) Funeral benefit of 75 francs ($14.48).

(*b*) A sum representing value of an annuity of 30 per cent of annual earnings of deceased, calculated upon basis of his age at death, to be distributed to—

Dependent widow or widower, whole amount if no other heirs, four-fifths if one child under 16 years of age or one or more dependent heirs, three-fifths if two or more children.

Children under 16 years of age, the residue.

Dependent heirs in ascending line and descending line under 16 years of age, in absence of widow or widower or children under 16 years of age.

Dependent brothers and sisters under 16 years of age in absence of heirs above enumerated.

(*c*) Allowances in case of annual wages of 2,400 francs ($463.20) or more, or of 365 francs ($70.45) or less, are based upon those amounts, respectively.

(*d*) Payments to widow and heirs in ascending line are converted into life pensions, those to other heirs into pensions expiring at age of 16 years. Heirs may require one-third of capital value of life pensions to be paid in cash and pension reduced accordingly.

Compensation for disability:

(*a*) Expense of medical and surgical treatment for not over six months.

(*b*) If totally disabled, an allowance of 50 per cent of daily wages, beginning with day after accident.

(*c*) If partially disabled, an allowance of 50 per cent of loss of earning power, beginning with day after accident.

(*d*) If, after three years, disability is permanent, temporary allowance is replaced by life annuity. Victim may require one-third of capital value of pension to be paid in cash and pension reduced accordingly.

(*c*) Allowances in case of annual wages of 2,400 francs ($463.20) or more, or of 365 francs ($70.45) or less, are based upon these amounts respectively.

Revision of compensation. Revision of compensation because of aggravation or diminution of disability, or death of victim, may be made within three years.

Insurance. Employers may transfer burden of payment of compensation to establishment funds or approved insurance companies or to general savings and retirement fund. They may also transfer burden of payment of temporary allowances to mutual aid societies.

Security of payments. Employers who have not relieved themselves of liability by insurance must make deposits of cash or securities or give real-estate mortgages to secure pension payments. To secure temporary disability payments of uninsured employers a state guaranty fund is maintained by a tax levied upon such employers.

Settlement of disputes. The local justice of the peace has sole jurisdiction as a court of first resort over disputes arising under the act, and his judgment is final in all cases involving 300 francs ($57.90) or less.

BRITISH COLUMBIA.

Date of enactment. June 21, 1902, in effect May 1, 1903.

Injuries compensated. Injuries by accident arising out of and in the course of the employment which cause death or disable a workman for at least two weeks from earning full wages at the work at which he was employed, unless the injury is "attributable solely to the serious and willful misconduct or serious neglect" of the injured workman.

Industries covered. Railways, factories, mines, quarries, engineering work, and buildings which exceed 40 feet in height and are being constructed or repaired by means of a scaffolding or being demolished or on which machinery driven by mechanical power is used for construction, repair, or demolition.

Persons compensated. All persons engaged in manual labor or otherwise.

Government employees. Act applies to civilian employees in the service of the Crown, to whom it would apply if the employer were a private person.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death:

(*a*) A sum equal to three years' earnings, but not less than $1,000 nor more than $1,500, to those wholly dependent on earnings of deceased.

(*b*) A sum less than above amount if workman leaves persons partially dependent on his earnings, the amount to be agreed upon by the parties or to be fixed by arbitration.

(*c*) Reasonable expenses of medical attendance and burial not exceeding $100, if deceased leaves no dependents.

Compensation for disability:

(*a*) A weekly payment during disability after second week, not exceeding 50 per cent of employee's average weekly earnings during the previous twelve months, such weekly payments not to exceed $10, and total liability not to exceed $1,500.

(*b*) A weekly payment during partial disability after second week to be fixed with regard to the difference between employee's average weekly earnings before the accident and average weekly amount which he is earning or able to earn after the injury.

(*c*) A lump sum may be substituted for the weekly payments, after six months, on the application of the employer, the amount to be settled, in default of agreement, by arbitration under the act.

Revision of compensation. Weekly payments may be revised at request of either party.

Insurance. Employers may contract with their employees for the substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the attorney-general certifies that the scheme is on the whole not less favorable to the general body of employees and their dependents than the provisions of the act. In such case the employer is liable only in accordance with this scheme.

Security of payments. When an employer becomes liable under the act to pay compensation and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of the employer becoming bankrupt, such workman has a first claim upon the amount so due, and a judge of the supreme court may direct the insurers to pay such sum into any chartered bank of Canada to be invested or applied to payment of compensation.

Settlement of disputes. Disputes arising under the act are settled by arbitration of existing committees representative of employers and employees, or if either party objects, by a single arbitrator agreed upon by the parties, or, in the absence of agreement, by an arbitrator appointed by a judge of the supreme court. An arbitrator appointed by a judge of the supreme court has all the power of a judge of the supreme court. Questions of law may be submitted by the arbitrator for the decision of a judge of the supreme court.

CAPE OF GOOD HOPE.

Date of enactment. June 6, 1905, in effect September 1, 1905.

Injuries compensated. All injuries to employees arising out of and in the course of the employment causing death or necessitating absence from work for more than three days and not being caused by or through the gross carelessness of the injured employee.

Industries covered. Any trade, business, or public undertaking, on land or upon or within the territorial waters of the colony, except domestic, messenger, or errand service or employment in agriculture.

Persons compensated. Employees, whether engaged in manual work or otherwise.

Government employees. Act applies to civilian persons employed by or under the Crown to whom it would apply if employer were a private person.

Burden of payment. Employer and every principal are jointly and severally liable for the compensations required under the act.

Compensation for death. When death results from an injury for which a lump sum has not already been paid on account of permanent disability—

(*a*) A lump sum not exceeding three years' wages of deceased, nor more than £400 ($1,946.60), to those wholly dependent upon the workman's earnings.

(*b*) A lump sum not exceeding £200 ($973.30) to those partially dependent upon the workman's earnings; in the absence of persons totally dependent, the sum not to exceed the value of the support which they were receiving from the deceased, calculated for two years.

(*c*) Temporary payments previously made not to be deducted from above sums unless they have continued longer than three months.

(*d*) Reasonable expenses of medical attendance and burial not exceeding £40 ($194.66) in case deceased leaves no dependents.

Compensation for disability:

(*a*) A sum not exceeding three years' wages, less any payments received under a provisional order of court, but not exceeding £600 ($2,919.90) in case of permanent total disability, and a smaller sum in proportion to loss of earning power and not exceeding £300 ($1,459.95) in case of permanent partial disability.

(*b*) A payment made, by order of the local magistrate, at the same intervals as the customary wage payments, not exceeding 50 per cent of wages received at time of the injury, nor £2 ($9.73) per week if the injury causes temporary disability lasting more than three days.

Revision of compensation. The provisional order may be set aside or altered by the magistrate, upon request of either party, if justified by a further examination of the injured person or by production of additional evidence.

Insurance. Employers may insure in a company or association against personal injury to the workmen employed by them or in their behalf. If the employer contributes toward a benefit society of which the injured or deceased person is a member, allowance is made for such contribution by the court in its order or judgment fixing amount of compensation to be paid.

Security of payments. When an employer or principal is adjudged or admits liability under the act and is entitled to any sum from any insurers on account of such liability, then, in the event the employer becomes insolvent, the worker or his dependents have a first claim upon such sum.

Settlement of disputes. Compensation in cases of disability is fixed provisionally for not more than six months by the local magistrate after receiving a physician's certificate of disability and holding an inquiry. No appeal can be taken from this preliminary order except against a finding on the question of gross carelessness and then only upon leave granted by the superior court. In case the injury results in death or permanent disability, the claimants have a right of action in the local magistrate's court for the amounts due under the law. In fixing the amount, the court is required in every case to have regard to the workman's or the dependent's necessities.

DENMARK.

Date of enactment. January 7, 1898, in effect January 15, 1899; amended May 15, 1903.

Injuries compensated. All injuries by accident occasioned by the trade or its conditions, and causing either death or disability lasting over thirteen weeks, unless brought on intentionally or through gross negligence of the victim.

Industries covered. Practically all establishments in mining, quarrying, manufactures, building and engineering work, transportation, telephone and telegraph services, diving and salvage; establishments using mechanical power which makes them subject to factory inspection; other industrial establishments designated by the minister of interior.

Persons compensated. All workmen in mechanical and technical departments, including those in supervisory capacity whose annual earnings do not exceed 2,400 crowns ($643.20).

Government employees. Act applies to all employees of state and the communal governments in industries above indicated.

Burden of payment. Entire burden of payment rests upon employer.

Compensation for death:

(*a*) Funeral benefit of 50 crowns ($13.40).

(*b*) A lump sum equal to four times annual earnings of deceased, but not over 3,200 crowns ($857.60) nor less than 1,200 crowns ($321.60), to—

Widow whole amount, if she survives.

Child whole amount, if it be the only heir.

Children, according to decision of insurance council, when there is no widow.

If neither widow nor children, insurance council decides whether and how far other heirs receive compensation.

Compensation for disability:

(*a*) From end of thirteenth week after accident until end of treatment, or until disability is declared permanent, a daily compensation of 60 per cent of earnings, but not less than 1 crown (27 cents) nor over 2 crowns (54 cents) for total disability, and a proportionate compensation for partial disability.

(*b*) In case of permanent disability an indemnity of six times annual earnings, but not less than 1,800 crowns ($482.40) nor over 4,800 crowns ($1,286.40) for total permanent disability, and proportionate payments for partial permanent disability.

(*c*) If employee suffering from permanent disability is a male between 30 and 55 years of age, he may demand purchase of an annuity. For men of other ages, or of unsound mind, or women and children, the insurance council may substitute an annuity.

Revision of compensation. Determination of degree of permanent disability must be made as soon as possible after one year from date of injury. If this be not possible, a temporary determination may be made, but a redetermination may be demanded within two years following.

Insurance. Employers may transfer obligation imposed by the law, by insuring their employees in authorized insurance companies or mutual employers' insurance associations.

Security of payments. Where liability under the law has not been transferred by insurance, indemnity for disability is a preferred claim upon assets of employer.

Settlement of disputes. Disputes concerning compensation, unless settled by mutual consent, must be referred to insurance council. Appeals may be had to the minister of interior.

FINLAND.

Date of enactment. December 5, 1895, in effect January 1, 1898.

Injuries compensated. All injuries by accident during work, causing death or disability for more than six days, except when brought on intentionally or through gross negligence of victim, intentionally by any other person than the one charged with supervision of the work, or caused by some other occurrence utterly independent of the nature or conditions of work.

Industries covered. Mines, quarries, metallurgical establishments, factories, sawmills, industrial establishments using mechanical power, construction of churches and buildings over one story high; construction and operation of water, gas, electric power plants, and operation of railroads.

Persons compensated. All persons actually employed at work, but not those supervising only.

Government employees. Act applies to employment on the state and communal construction works and state railways.

Burden of payment. Entire burden of payment rests upon employer.

Compensation for death. In addition to any prior payments on account of disability, pensions to dependent heirs, from day of death, not exceeding 40 per cent of annual earnings of deceased, to—

(*a*) Widow, 20 per cent, until death or remarriage; in latter case a final sum equal to two annual payments.

(*b*) Each child until the age of 15 years, 10 per cent, if one parent survives, and 20 per cent if neither parent survives.

(*c*) In computing pension, earnings of workman to be considered not over 720 marks ($138.96) nor under 300 marks ($57.90); but no adult employee to receive a pension greater than his actual earnings.

Compensation for disability:

(*a*) A pension equal to 60 per cent of employee's earnings for total disability, or a pension proportionate to the degree of incapacity for partial disability, to be paid from day of recovery from illness due to injury, or after 120 days have elapsed since injury.

(*b*) Pension may by mutual consent be replaced by single payment, if it does not exceed 20 marks ($3.86) annually.

(*c*) In computing pension, earnings of workman to be considered not over 720 marks ($138.96) nor under 300 marks ($57.90); but no adult employee to receive a pension greater than his actual earnings.

(*d*) In cases of temporary disability (including all cases of disability for 120 days after injury) daily compensation of 60 per cent of earnings, beginning with seventh day after accident, for complete temporary disability, and a proportionate compensation for partial disability; but not more than 2.50 marks (48 cents) per diem.

(*e*) Until recovery, injured employee may be given treatment in a hospital in lieu of other compensation; during such treatment his wife and children get a compensation equal to pension in case of death.

Revision of compensation. Demands for revision of compensation may be made by either party before proper court.

Insurance. Employers are required to transfer the burden of payment of compensation to a governmental insurance office, private insurance company, mutual employers' insurance association, or approved foreign insurance company, unless unable to obtain such insurance or released from this obligation on presentation of satisfactory guarantees.

Security of payments. When exempted from the duty of insuring his employees, or unable to obtain insurance, the employer must guarantee payment of pension to the injured workman or his family by arrangement with a private insurance company.

Settlement of disputes. In case of absence of insurance or dissatisfaction with decision of insurance company, injured employee or his dependent may carry the case into the inferior court of the locality.

FRANCE.

Date of enactment. April 9, 1898, in effect July 1, 1899; amendatory and supplementary acts March 22, 1902, March 31, 1905, April 12, 1906, and July 17, 1907.

Injuries compensated. All injuries by accident to workmen or salaried employees during or on account of labor causing death or disability for five or more days, unless produced intentionally by the victim. If due to inexcusable fault of victim or of employer, compensation may by a court order be decreased or increased, but not exceeding actual earnings of victim.

Industries covered. Building trades, factories, workshops, shipyards, transportation by land and water, public warehouses, mining and quarrying, manufacture or handling of explosives, agricultural and other work using mechanical power, and mercantile establishments; other industries on request of both parties.

Persons compensated. All workmen and salaried employees.

Government employees. Law applies to state, departmental, and communal establishments when engaged in industries enumerated above.

Burden of payment. Entire cost of compensation falls upon employer.

Compensation for death:

(*a*) Funeral expenses not exceeding 100 francs ($19.30).

(*b*) Pensions to dependent heirs not exceeding 60 per cent of annual wages of deceased, distributed to—

Widow or widower, 20 per cent until death or remarriage, in which latter case a final sum equal to three annual payments.

Children under 16 years of age if one parent survives—15 per cent if there is but one child; 25 per cent if there are two children; 35 per cent if there are three children; 40 per cent if there are four or more children.

Each child under 16 years of age if neither parent survives, 20 per cent.

Each ascendant and each descendant under 16 years of age dependent upon deceased, if no widow or children survive, 10 per cent, the aggregate not to exceed 30 per cent.

(*c*) If annual wages exceed 2,400 francs ($463.20), only one-fourth of the excess is considered in computing pensions.

Compensation for disability:

(*a*) Expenses of medical or surgical treatment.

(*b*) If permanently disabled, a pension of 66⅔ per cent of annual wages for total disability and of one-half loss of earning capacity for partial disability; or, if demanded, one-fourth the capital value of pension in cash, the pension to be reduced accordingly.

(*c*) If temporarily disabled, an allowance of 50 per cent of daily wages, beginning with fifth day, and including Sundays and holidays, unless disability lasts more than ten days, when payments become due from the first day.

(*d*) If annual wages exceed 2,400 francs ($463.20), only one-fourth of the excess is considered in computing pensions.

(*e*) Payments of pensions of not over 100 francs ($19.30) per annum may, by mutual consent when beneficiary is of age, be replaced by a cash payment.

Revision of compensation. Revision of compensation because of aggravation or diminution of disability of victim may be made within three years.

Insurance. Employers may transfer burden of payment of compensation to approved mutual aid, accident insurance, or guaranty associations, or in case of pensions, to national accident insurance or national old-age pension funds.

Security of payments. The State guarantees against loss of pension payments on account of insolvency of employers or insurance organizations, and is reimbursed by a special tax on employers within scope of the act. For temporary disability payments, medicines and medical or surgical attendance, and funeral expenses the victim, his creditors, or representatives have a preferred claim on property of employer.

Settlement of disputes. Disputes as to pensions or involving more than 300 francs ($57.90) may be carried into higher civil courts. Judgment of local justice of the peace is final in other cases.

GERMANY.

Date of enactment. July 6, 1884, in effect October 1, 1885. Supplementary acts May 28, 1885, May 5, 1886, July 11 and 13, 1887. A codification enacted June 30, 1900.

Injuries compensated. Injuries by accident in the course of the employment, causing death or disability for more than three days, unless caused intentionally. Compensation may be refused or reduced if injury was received while committing an illegal act.

Industries covered. Mining, salt works, quarrying and allied industries, shipyards, factories, smelting works, building trades, chimney sweeping, window cleaning, butchering, transportation and handling, agriculture, forestry, and fisheries.

Persons compensated. All workmen, and those technical officials whose annual earnings are less than 3,000 marks ($714). With the approval of the Imperial Insurance Office the law may be extended to other classes.

Government employees. Act covers government employees in postal, telegraph, and railway services and in industrial enterprises of army and navy, unless otherwise provided for.

Burden of payment. Medical and surgical treatment for ninety-one days and benefit payments from third to ninety-first days are provided by sick-benefit funds to which employers contribute one-third and employees two-thirds; from twenty-eighth to ninety-first day payments are increased by one-third at expense of employer in whose establishment accident occurred; after ninety-first day, and in case of death from injuries, expense is borne by employers' associations supported by contributions of employers.

Compensation for death:

(*a*) Funeral benefits of one-fifteenth of annual earnings of deceased, but not less than 50 marks ($11.90).

(*b*) Pensions to dependent heirs not exceeding 60 per cent of annual earnings of the deceased, as follows: Widow, 20 per cent of annual earnings until death or remarriage; in latter case a final sum equal to three annual payments; dependent widower, 20 per cent of annual earnings; each child 15 years of age or under, 20 per cent; payments to consort and to children to be reduced proportionately if the total would exceed 60 per cent; dependent heirs in ascending line, 20 per cent or less, if there is a residue after providing for above heirs; orphan grandchildren, 20 per cent or less, if there is a residue after providing for above heirs.

(*c*) If annual earnings exceed 1,500 marks ($357), only one-third of excess is considered in computing pensions.

Compensation for disability:

(*a*) Free medical and surgical treatment paid first thirteen weeks by sick benefit funds, and afterwards by employers' associations.

(*b*) For temporary or permanent total disability, 50 per cent of daily wages of persons similarly employed, but not exceeding 3 marks (71 cents), paid by sick benefit funds from third day to end of fourth week; from fifth to end of thirteenth week, above allowance by sick benefit fund, plus 16⅔ per cent contributed by employer direct; after thirteen weeks, 66⅔ per cent of average annual earnings of injured person paid by employers' associations.

(*c*) For complete helplessness necessitating attendance, payments may be increased to 100 per cent of annual earnings.

(*d*) For partial disability, a corresponding reduction in payments.

(*e*) If annual earnings exceed 1,500 marks ($357), only one-third of excess is considered in computing pensions.

Revision of payments. Whenever a change in condition of injured person occurs, a revision of benefits may be made.

Insurance. Payments are met by mutual insurance associations of employers, in which all employees are required to be insured at the expense of employers. Separate associations have been organized for each industry.

Security of payments. Solvency of employers' associations is guaranteed by the State.

Settlement of disputes. Disputes are settled by "arbitration courts for workingmen's insurance," composed of one government official, two representatives of workmen, and two of employers.

GREAT BRITAIN.

Date of enactment. December 21, 1906, in effect July 1, 1907, replacing acts of August 6, 1897, and July 30, 1900.

Injuries compensated. Injuries by accident arising out of and in the course of the employment which cause death or disable a workman for at least one week from earning full wages at the work at which he was employed. Compensation is not paid when injury is due to serious and willful misconduct, unless it results in death or serious and permanent disablement.

Industries covered. "Any employment."

Persons compensated. Any person regularly employed for the purposes of the employer's trade or business whose compensation is less than £250 ($1,216.63) per annum; but persons engaged in manual labor only are not subject to this limitation.

Government employees. Act applies to civilian persons employed under the Crown to whom it would apply if the employer were a private person.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death:

(*a*) A sum equal to three years' earnings, but not less than £150 ($729.98) nor more than £300 ($1,459.95), to those entirely dependent on earnings of deceased.

(*b*) A sum less than above amount if deceased leaves persons partially dependent on his earnings, amount to be agreed upon by the parties or fixed by arbitration.

(*c*) Reasonable expenses of medical attendance and burial, but not to exceed £10 ($48.67) if deceased leaves no dependents.

Compensation for disability:

(*a*) A weekly payment during incapacity of not more than 30 per cent of employee's average weekly earnings during previous twelve months, but not exceeding £1 ($4.87) per week; if incapacity lasts less than two weeks no payment is required for the first week.

(*b*) A weekly payment during partial disability, not exceeding the difference between employee's average weekly earnings before injury and average amount which he is earning or is able to earn after injury.

(*c*) Minor persons may be allowed full earnings during incapacity, but weekly payments may not exceed 10 shillings ($2.43).

(*d*) A sum sufficient to purchase a life annuity through the Post-Office Savings Bank of 75 per cent of annual value of weekly payments may be substituted, on application of the employer, for weekly payments after six months; but other arrangements for redemption of weekly payments may be made by agreement between employer and employee.

Revision of benefits. Weekly payments may be revised at request of either party, under regulations issued by the secretary of state.

Insurance. Employers may make contracts with employees for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the registrar of friendly societies certifies that the scheme is not less favorable to the workmen and their dependents than the provisions of the act, and that a majority of the workmen are favorable to the substitute. The employer is then liable only in accordance with the provisions of the scheme.

Security of payments. In case of employer's bankruptcy, the amount of compensation due under the act, up to £100 ($486.65) in any individual case, is classed as a preferred claim; or where an employer has entered into a contract with insurers in respect of any liability under the act to any workman, such rights of the employer, in case he becomes bankrupt, are transferred to and vested in the workman.

Settlement of disputes. Questions arising under the law are settled either by a committee representative of the employer and his workmen, by an arbitrator selected by the two parties, or, if the parties can not agree, by the judge of the county court, who may appoint an arbitrator to act in his place.

GREECE.

Date of enactment. February 21 (March 6), 1901, in effect (retroactively) December 20, 1900 (January 2, 1901).

Injuries compensated. All injuries by accidents during or because of the employment and causing death or disability lasting more than four days, unless brought on intentionally by the injured person.

Industries covered. Mines, quarries, and metallurgical establishments.

Persons compensated. All workingmen and subordinate salaried persons.

Government employees. No mention of government employees is made in the law.

Burden of payment. Employer carries full burden of payment of indemnities during first three months; after three months, half the payments of pensions are contributed by the miners' fund, which is mainly supported by a tax on the mines and metallurgical establishments, but partly by contributions from the workingmen's mutual aid societies in these establishments and some minor sources.

Compensation for death:

(*a*) If death occurs immediately or within three months: (1) Funeral expenses amounting to 60 drachmas ($11.58); (2) pensions to heirs aggregating pension paid for total disability.

(*b*) If death occurs three months after injury or later, pensions to heirs aggregating 75 per cent of pension paid during life of the injured.

(*c*) All pensions to heirs are distributed as follows: Equal share to widow and children, or, in absence of widow and children, equal share to father and mother.

(*d*) Pension to widow ceases on her remarriage; to male children at 16 years of age; to female children on their marriage, with payment of one year's pension as a dowry.

(*e*) If only one heir survives he is entitled to only one-half of original pension.

Compensation for disability:

(*a*) Free medical and surgical treatment.

(*b*) An allowance of 50 per cent of earnings of injured employee during first three months.

(*c*) If permanently disabled, a pension of 50 per cent of earnings in case of total disability (including loss of a hand or foot); in case of partial disability, a pension of 33⅓ per cent of earnings, pension payments to begin after end of third month.

(*d*) Pension may not exceed 100 drachmas ($19.30) per month plus 25 per cent of the excess of computed pension over 100 drachmas ($19.30).

(*e*) In computing pension of apprentices and children, no wage is to be considered less than 2.50 drachmas (48 cents) per day.

Revision of compensation. Injured employee may present a new petition, or the council of the miners' fund may order a new examination, whenever there is reason to believe that changes have occurred in the degree of disability.

Insurance. No provision is made by the law for the transfer of the burden of payment of compensation by insurance.

Security of payments. The miners' fund guarantees payment of pensions and other allowances, and has preferred claim upon employer's assets in cases of dissolution or forced sale of establishment, and also in cases of voluntary transfer, unless the new proprietor assumes the obligations under the law.

Settlement of disputes. Amount of pension is settled by the council of the miners' fund, and appeals against its decisions may be carried into the ordinary courts.

HUNGARY.

Date of enactment. April 9, 1907, in effect July 1, 1907.

Injuries compensated. Injuries by accident in the course of the employment causing death or disability for more than three days. Injuries caused intentionally are not compensated unless fatal.

Industries covered. All factories subject to inspection, mines, quarries, metallurgical establishments, building trades, lumbering, construction work, shipbuilding, slaughterhouses, pharmacies, sanatoria, theaters, institutes of art and science.

Persons compensated. All employees in industries enumerated.

Government employees. Act covers government employees in state, municipal, and communal industries enumerated above.

Burden of payment. All benefits and cost of treatment for first ten weeks provided by sick funds to which employers and employees contribute equally. Beginning with eleventh week entire cost is defrayed by employers through the accident fund.

Compensation for death:

(*a*) Funeral benefit of twenty times average daily wages.

(*b*) Pensions to heirs not exceeding 60 per cent of annual earnings of deceased, as follows—

Widow, 20 per cent of annual earnings until death or remarriage; in latter case a final sum equal to 60 per cent of annual earnings; or to dependent widower 20 per cent during disability.

Each child 16 years of age or under, 15 per cent if one parent survives, 30 per cent if neither survives; payments to consort and children reduced proportionately if they aggregate more than 60 per cent.

Dependent parents and grandparents if there is a residue after providing for above heirs, 20 per cent or less.

Dependent orphan grandchildren 15 years of age or under, if there is a residue after providing for above heirs, 20 per cent or less.

(*c*) In computing pensions the excess of annual earnings above 2,400 crowns ($487.20) is not considered.

Compensation for disability:

(*a*) Free medical and surgical treatment provided first ten weeks by sick fund, and afterward by accident fund.

(*b*) For temporary or permanent total disability, 50 per cent of average daily wages but not exceeding 4 crowns (81 cents) for first ten weeks, provided by sick fund; beginning with eleventh week, 60 per cent of average annual earnings, provided by accident fund.

(*c*) For complete helplessness necessitating attendance payments may be increased to 100 per cent of annual earnings.

(*d*) For partial disability a corresponding portion of full pension.

(*e*) In computing pensions the excess of annual earnings above 2,400 crowns ($487.20) is not considered.

Revision of compensation. Whenever a change in condition of injured person occurs the accident fund or the injured person may ask for a revision of the benefits.

Insurance. Payments are met by a state insurance institution, in which all employees are required to be insured at the expense of employers.

Security of payment. Guaranteed by the State.

Settlement of disputes. Disputes are settled by arbitration courts, consisting of a presiding judge and an equal number of representatives of workmen and employers.

ITALY.

Date of enactment. March 17, 1898, in effect September 17, 1898. Amended June 29, 1903. Promulgated in codified form January 31, 1904.

Injuries compensated. All injuries sustained by workmen or salaried employees during or on account of labor. If due to willful misconduct, employer may be reimbursed through criminal action.

Industries covered. Mines, quarries, building trades; light, heat, and power plants; arsenals; maritime construction work; transportation; industries requiring the use or handling of explosives; all industrial or agricultural work in proximity to power machinery; where more than five persons are employed in engineering construction work; operations for protection against landslides, floods, hailstorms; logging and timber rafting, and shipbuilding.

Persons compensated. All workmen and apprentices and overseers receiving not more than 7 liras ($1.35) per day and paid at intervals of one month or less.

Government employees. Act applies to employment in state, provincial, and communal industries enumerated above unless specially provided for, and to work performed for a government institution under contract or concession.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death. If within two years after the accident, five times annual wages of deceased workman, with a maximum of 10,000 liras ($1,930), distributed to—

(*a*) Surviving consort two-fifths of indemnity if there are children; one-half of indemnity if there are dependent ascendants; three-fifths of indemnity if only dependent brothers or sisters; entire indemnity in absence of heirs enumerated.

Children, amounts sufficient to purchase an annuity of equal amount for each child under 12 years of age, and one-half of such annuity for each child from 12 to 18 years of age.

Each dependent parent or grand parent, if there are no children, annuity of equal amount for life.

Dependent brothers or sisters less than 18 years of age or incapable of performing labor by reason of a mental or physical defect, if there are no children or dependent ascendants, annuities distributed upon same principle as in case of children.

(*b*) In absence of heirs indemnity is turned into a special fund for immediate aid to injured, payment of indemnities for insolvent employers, and prevention of accidents.

Compensation for disability.

(*a*) Cost of first medical and surgical treatment.

(*b*) An indemnity in case of permanent disability of six times annual earnings, but not less than 3,000 liras ($579) if totally disabled, and six times the loss of annual earning capacity if partially disabled, earnings in latter case to be considered as not less than 500 liras ($96.50).

(*c*) A daily allowance in case of temporary disability of one-half the wages of injured workman, payable for not more than three months, if totally disabled, and equal to one-half the reduction in wages occasioned by the injury, if partially disabled.

Revision of compensation. Both workman and insurer may ask for a revision of compensation within two years after accident.

Insurance. Employers must insure their employees in (a) the National Accident Insurance Fund, (b) an authorized insurance company, (c) an association of employers for mutual insurance against accidents, or (d) a private employers' insurance fund.

Security of payments. Payments are guaranteed by State.

Settlement of disputes. In cases of dispute concerning temporary disability payments, the council of prudhommes or the pretor of the locality in which the accident occurred has authority to sit in final judgment if amount involved does not exceed 200 liras ($38.60). Disputes involving larger amounts are referred for settlement to the local magistrates.

LUXEMBURG.

Date of enactment. April 5, 1902, in effect April 15, 1903. Sick insurance law enacted July 31, 1901.

Injuries compensated. All injuries by accident during or because of the employment, resulting in death or disability for more than three days, unless caused intentionally by the victim or during the commission of an illegal act.

Industries covered. Mines, quarries, manufactories, metallurgical establishments; gas and electric works; transportation and handling; building and engineering construction; and certain artisans' shops having at least five employees regularly and using mechanical motive power. By administrative order other establishments may become subject to the law if regarded dangerous.

Persons compensated. Workmen and those supervising and technical officials whose annual earnings are less than 3,000 francs ($579). Certain other classes of persons may be voluntarily insured.

Government employees. Act applies to government telegraph and telephone services, public works conducted by public agencies, and other governmental industrial establishments, unless other provisions are made for pensioning employees. Penal institutions are not included.

Burden of payment. Benefits and cost of treatment first thirteen weeks provided by sick benefit funds, to which employers contribute one-third and employees two-thirds, if injured person is insured against sickness; if not, because employed less than one week, by an accident insurance association, supported by contributions of employers; if not insured for other reasons, by the employer direct; all benefits and treatment after thirteen weeks paid by accident insurance association.

Compensation for death:

(*a*) Funeral expenses, one-fifteenth of the annual earnings, but not less than 40 francs ($7.72) nor more than 80 francs ($15.44).

(*b*) Pensions, not to exceed 60 per cent of earnings of deceased, to—

Widow 20 per cent until death or remarriage; in the latter case a lump sum equal to 60 per cent; same payment to a dependent widower.

Each child 20 per cent until 15 years of age, even if father survives, provided he abandoned them, or the mother who was killed was their main support.

Dependent heirs in an ascending line, 20 per cent.

Dependent orphan grandchildren 20 per cent until 15 years of age.

Widow and children have the preference over other heirs.

(*c*) In computing pensions only one-third of excess of annual earnings over 1,500 francs ($289.50) is considered.

Compensation for disability:

(*a*) Entire cost of medical and surgical treatment.

(*b*) For temporary or permanent total disability, from third day to end of fourth week, 50 per cent, and from fifth to end of thirteenth week, 60 per cent of wages of persons similarly employed; after thirteen weeks, 66⅔ per cent of annual earnings of injured person.

(*c*) For partial disability a portion of above (depending upon degree of disability), which may be increased to full amount, as long as injured employee is without employment.

(*d*) Lump sum payments may be substituted for pensions when degree of disability is not greater than 20 per cent.

(*e*) In computing pensions only one-third of excess of annual earnings over 1,500 francs ($289.50) is considered.

Revision of compensation. Demands for change of amount of compensation may be made within three years.

Insurance. Payments are met by mutual accident insurance association of employers in which all employees must be insured at expense of employers.

Security of payments. Insurance association conducted under state supervision.

Settlement of disputes. Appeals from the decisions of the association may be carried within forty days to a justice of the peace, who is required to invite two delegates, representing employer and employee, to assist in an advisory capacity. Further appeals may be taken to the higher courts.

NETHERLANDS.

Date of enactment. January 2, 1901, in effect June 1, 1901. Other acts February 3 and December 8, 1902, and July 24, 1903.

Injuries compensated. All injuries caused by accident in the course of the employment and causing death or disability for over two days, unless brought on intentionally. If due to intoxication, compensation is reduced one-half, and if death results no compensation is paid.

Industries covered. Practically all manufacturing, mining, quarrying, building, engineering construction, and transportation; fishing in internal waters; establishments using mechanical motive power, or explosive or inflammable materials, and mercantile establishments handling such materials.

Persons compensated. All workmen, including apprentices.

Government employees. All state, provincial, and communal employees are included when engaged in any of the industries enumerated.

Burden of payment. The entire expense rests upon the employer.

Compensation for death:

(*a*) Funeral benefit of thirty times average daily earnings of deceased.

(*b*) Pensions to heirs of not over 60 per cent of earnings of deceased, distributed to—

Widow, 30 per cent of earnings, until death or remarriage, in latter case two years' payments as a settlement; or to dependent widower, a pension equal to cost of support, but not over 30 per cent of earnings of deceased.

Each child under 16 years of age, 15 per cent if one parent survives, and 20 per cent if both are dead.

Dependent parents, and in their absence to grand parents, not over 30 per cent.

Orphan grandchildren, not over 20 per cent.

Dependent parents-in-law, not over 30 per cent.

Widow and children to be preferred over all other heirs, and their respective shares to be reduced proportionately when aggregating over 60 per cent.

(*c*) In computing pensions, wages higher than 4 florins ($1.61) per day are to be considered as of that amount.

Compensation for disability:

(*a*) Free medical and surgical treatment, or its cost.

(*b*) From day after injury until forty-third day, an allowance of 70 per cent of daily earnings, excluding Sundays and holidays.

(*c*) From forty-third day a pension of above amount during total disability and a smaller pension in proportion to loss of earning power if partially disabled.

(*d*) In computing pensions, wages higher than 4 florins ($1.61) per day are to be considered as of that amount.

Revision of compensation. An examination of condition of victim may be made whenever the Royal Insurance Bank so desires.

Insurance. Employers may insure their employees in the Royal Insurance Bank (a state institution), in a private company or association operating under State supervision, or they may carry the burden themselves. If not insured in the Royal Insurance Bank a sufficient guarantee must be deposited with the latter. Employers must bear a proportionate share of the expense of administration of the Royal Insurance Bank, whether they insure in it or not.

Security of payments. Compensation payments are guaranteed by the State.

Settlement of disputes. Appeals may be taken from decisions of the Royal Insurance Bank to local arbitration councils, in which employers and employees are equally represented, and from them to a central arbitration council whose decisions are final.

NEW ZEALAND.

Date of enactment. October 18, 1900, to take effect at a date fixed by the governor by order in council. Amended October 3, 1902, November 23, 1903, November 8, 1904, October 31, 1905, and October 29, 1906.

Injuries compensated. All injuries to workmen arising out of and in the course of the employment causing death or disability for at least one week, except when due to serious and willful misconduct of the workman injured.

Industries covered. Industrial, commercial, manufacturing, building, agricultural, pastoral, mining, quarrying, engineering, and hazardous work carried on by or on behalf of the employer as a part of his trade or business.

Persons compensated. All persons under contract with an employer.

Government employees. Act applies to work carried on by or on behalf of the Government or any local authority if it would, in case of a private employer, be an employment to which the act applies.

Burden of payment. Entire cost of compensation rests upon employer; but if there are contractors, then on such contractors and the principal, jointly and severally.

Compensation for death:

(*a*) A sum equal to three years' earnings, but not less than £200 ($973.30) nor more than £400 ($1,946.60), to those wholly dependent upon earnings of deceased.

(*b*) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by a magistrate or by the arbitration court.

(*c*) Reasonable expenses of medical attendance and burial, not exceeding £30 ($146.00), in case deceased leaves no dependents.

Compensation for disability:

(*a*) A weekly payment during disability not exceeding 50 per cent of employee's average weekly earnings during the previous twelve months, but not to exceed £2 ($9.73) nor to fall below £1 ($4.87) where employee's ordinary rate of pay at time of accident was not less than 30 shillings ($7.30) per week. Total liability of employer is limited to £300 ($1,459.95). No payment is made for first week if disability does not continue for a longer period than two weeks.

(*b*) A lump sum may be substituted for weekly payments for permanent total or partial disability, to be agreed on by the parties or, in default of agreement, determined by the court of arbitration.

Revision of benefits. Weekly payments may be revised at request of either party.

Insurance. Employers may contract with their employees for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the scheme is shown to be not less favorable to the general body of employees and their dependents than the provisions of the act. In such case the employer is liable only in accordance with the scheme.

Security of payments. When an employer becomes liable under this act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of his becoming insolvent such workman has a first claim upon this sum. Compensation for injuries sustained in the course of employment in or about a mine, factory, building, or vessel is deemed a charge upon the employer's interest in such property and has priority over all charges other than those lawfully existing at the time of the commencement of the act.

Settlement of disputes. Disputes arising under the act are settled by the court of arbitration under the industrial arbitration act. Where claim for compensation does not exceed £200 ($973.30) proceedings may be instituted before a magistrate whose decision is final, except that in cases where amount involved does not exceed £50 ($243.33) either party may, with the consent of the magistrate, and in cases where the claim exceeds £50 ($243.33), without such consent, appeal from his decision on any point of law.

NORWAY.

Date of enactment, July 23, 1894, in effect July 1, 1895.

Injuries compensated. All injuries by industrial accidents, causing death, or disability for more than four weeks, or requiring treatment after that period, unless intentionally brought about by the injured person.

Industries covered. Practically all factories and workshops using other than hand power; mines and quarries; the handling of ice, explosives, or inflammable wares; building and engineering construction, electric work, transportation, salvage and diving, chimney sweeping, and fire extinguishing. Employees in other industries may avail themselves of this insurance system.

Persons compensated. All workingmen and overseers.

Government employees. Act covers employees in government or communal service, when engaged in any of the industries enumerated above, unless at least equal compensation is provided by special regulation.

Burden of payment. Cost of compensation rests upon employer.

Compensation in case of death:

(*a*) Funeral benefit of 50 crowns ($13.40).

(*b*) Pensions to heirs not exceeding 50 per cent of earnings, to be distributed to—

Widow, 20 per cent of earnings, until death or remarriage; in the latter case a lump sum equal to three annual payments; or dependent widower, 20 per cent of annual earnings of deceased while disability lasts.

Each child 15 per cent of annual earnings till age of 15 years, if one parent survives, or 20 per cent if neither survives; 15 per cent for each parent to each child, when both parents have died as result of injuries.

Dependent relatives in ascending line, if there is a residue after providing for above-mentioned heirs, a pension of 20 per cent of earnings until death or cessation of need, to be divided equally; but living parents exclude grandparents from participation.

(*c*) In computing pensions, the excess of annual earnings over 1,200 crowns ($321.60) is not considered.

(*d*) Pension payments are in addition to prior allowances granted for disability.

Compensation for disability:

(*a*) Free medical and surgical treatment, or cost of same, after four weeks.

(*b*) If employee is totally disabled for more than four weeks an allowance of 60 per cent of the earnings, but not less than 0.50 crown (13 cents) per diem or 150 crowns ($40.20) per annum; and a proportionate allowance in case of partial disability.

(*c*) If injured employee is forced to stay in a hospital, dependents receive allowances during that time equal to the pensions granted in cases of death.

(*d*) If injured employee is not a member of a sick insurance fund he is entitled to receive from employer directly sick benefits and free medical treatment from first day of injury.

(*e*) In computing allowances the excess of annual earnings over 1,200 crowns ($321.60) is not considered.

Revision of compensation. Compensation is subject to revision upon demand of either the beneficiary or the insurance office.

Insurance. A state central insurance office is established for the entire Kingdom, in which all employees subject to the law must be insured by employer, unless he is, for special reasons, relieved by royal order from the obligation of insurance.

Security of payments. Insurance office is guaranteed by the State.

Settlement of disputes. Appeals from decisions of insurance office may be entered within six weeks with the special insurance commission.

QUEENSLAND.

Date of enactment. December 20, 1905, in effect March 31, 1906.

Injuries compensated. All injuries by accident, arising out of and in the course of the employment, which cause death or disable a workman for at least two weeks from earning full wages at the work at which he was employed, except when the injury is directly attributable to his serious and wilful misconduct or when it occurs while proceeding to or from his place of work.

Industries covered. Industrial, commercial, manufacturing, building, agricultural, pastoral, mining, quarrying, engineering, or hazardous work carried on by or on behalf of the employer as a part of his trade or business.

Persons compensated. All persons under contract with an employer.

Government employees. Act applies to any work carried on by or on behalf of the government or any local authority if it would, in case of a private employer, be an employment to which the act applies.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death:

(*a*) A sum equal to three years' earnings, but not less than £200 ($973.30) nor more than £400 ($1,946.60), to those wholly dependent upon earnings of deceased; but aged and infirm employees may agree in advance to accept a reduced amount.

(*b*) A sum less than above if heirs are only partly dependent.

(*c*) Reasonable expenses of medical attendance and burial, not exceeding £30 ($146), if deceased leaves no dependents.

Compensation for disability:

(*a*) A weekly payment during disability after second week, not exceeding 50 per cent of employee's average weekly earnings during the previous twelve months, such weekly payments not to exceed £1 ($4.87), and total liability not to exceed £400 ($1,946.60); except that aged and infirm employees may agree in advance to accept a reduced amount.

(*b*) A weekly payment during partial disability after second week, not exceeding one-half of difference between the employee's average weekly earnings before the accident and the average weekly amount which he is earning or able to earn after injury.

(*c*) Minors may be allowed full earnings during incapacity, not exceeding 10 shillings ($2.43) weekly.

(*d*) A lump sum may be substituted for weekly payments after three months, on application of employer, the amount to be agreed upon or, in default of agreement, to be determined by a police magistrate.

Revision of compensation. Weekly payments may be revised by a police magistrate at request of either party.

Insurance. Employers may contract with their employees for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act if the scheme is officially certified to be not less favorable to the employees and their dependents than the provisions of the act. In such case the employer is liable only in accordance with the scheme.

Security of payments. When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a worker under such liability, then in the event of his becoming insolvent, such workman has a first claim upon this sum for the amount so due.

Settlement of disputes. Disputes arising under the act are heard and determined by a police magistrate, whose decision is final, except that either party may appeal from this decision on any point of law with the latter's leave if the claim does not exceed £50 ($243.33), or without his leave if it exceeds that amount.

RUSSIA.

Date of enactment. June 2 (15), 1903, in effect January 1 (14), 1904.

Injuries compensated. All injuries by accident occasioned by or on account of the work and causing death or disability for more than three days, unless brought on intentionally by the victim or due to gross imprudence.

Industries covered. Metallurgical and mining establishments and factories and workshops using other than hand power, but exclusive of shops of private railroad and steamship companies and certain rural industrial establishments.

Persons compensated. Workmen and those technical officials whose annual earnings do not exceed 1,500 rubles ($772.50).

Government employees. Act applies to mining, metallurgical and manufacturing establishments of municipal and zemstvo governments, but not to national government employees, for whom special regulations exist.

Burden of payment. Entire burden of payment rests upon employer.

Compensation for death:

(*a*) Funeral expenses not exceeding 30 rubles ($15.45) for an adult and 15 rubles ($7.73) for a child under 15 years of age.

(*b*) Pensions to dependent heirs not exceeding 66⅔ per cent of annual earnings of victim, distributed to—

Widow 33⅓ per cent until death or remarriage; in the latter case a lump sum equal to three annual payments.

Each child until age of 15 years 16⅔ per cent if one parent survives and 25 per cent if neither parent survives.

Dependent heirs in ascending line, 16⅔ per cent.

Each dependent orphan brother and sister until 15 years of age, 16⅔ per cent.

Widow and children take precedence over other dependent heirs, who share the remainder in equal parts.

(*c*) Pension may, by mutual consent of employer and beneficiary, be replaced by single payment of ten times amount of annual pension and, in case of children, pension multiplied by the number of years remaining for pension payments, but not exceeding ten.

Compensation for disability:

(*a*) Free medical and surgical treatment or reimbursement of expense of same.

(*b*) If permanently disabled, a pension of 66⅔ percent of annual earnings of victim in case of total disability, and a pension proportionate to degree of incapacity in case of partial disability, to be paid from time when degree of permanent disability was determined; if amount of pension exceeds that of previous allowance for temporary disability, difference between the two during the period of disability is paid to permanently injured employee.

(*c*) Pension may, by mutual consent of employer and beneficiary, be replaced by a single payment of ten times amount of annual pension.

(*d*) If temporarily disabled, an allowance of 50 per cent of actual wages of victim from day of accident until complete recovery from disability or the determining of degree of permanent disability.

Revision of compensation. Demands for revision of payments or to secure a pension previously refused may be made by either party within three years.

Insurance. Employers may transfer burden of payment of compensation by insuring their employees in authorized insurance companies or societies.

Security of payments. On retiring from business employer must guarantee payments by insurance or by deposit with a state bank. In case of insolvency, payments constitute a preferred claim.

Settlements of disputes. Disputes may be carried into courts as other civil cases. Such cases are exempt from court fees, the documents are free from stamp tax, and attorney's fees are fixed by law.

SOUTH AUSTRALIA.

Date of enactment. December 5, 1900, in effect not earlier than June 1, 1901.

Injuries compensated. All injuries to workmen arising out of and in the course of the employment causing death or disability for at least one week, except when due to serious and willful misconduct of the workman injured.

Industries covered. Railways, waterworks, tramways, electric-lighting works, factories, mines, quarries, engineering and building work, employments declared by a proclamation of the governor upon addresses from both houses of parliament to be dangerous or injurious to health or dangerous to life or limb, and agricultural pursuits where mechanical motive power is used.

Persons compensated. All persons engaged in manual labor or otherwise.

Government employees. Act applies to civilian persons employed under the Crown to whom it would apply if the employer were a private person.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death:

(*a*) A sum equal to three years' earnings, but not less than £150 ($729.98) nor more than £300 ($1,459.95), to those wholly dependent upon earnings of deceased.

(*b*) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by arbitration.

(*c*) Reasonable expenses of medical attendance and burial not exceeding £50 ($243.33), if deceased leaves no dependents.

Compensation for disability:

(*a*) A weekly payment during disability after first week, not exceeding 50 per cent of employee's average weekly earnings during the previous twelve months, such weekly payments not to exceed £1 ($4.87) nor, in case of total incapacity, to be less than 7s. 6d. ($1.83) per week, and total liability not to exceed £300 ($1,459.95).

(*b*) A weekly payment during partial disability after first week to be fixed with regard to difference between employee's average weekly earnings before the accident and average weekly amount which he is earning or able to earn after injury.

(*c*) A lump sum not exceeding £300 ($1,459.95) may be substituted for weekly payments, after six months, on application of either party, the amount to be settled by arbitration under the act in default of agreement.

Revision of benefits. Weekly payments may be revised at request of either party.

Insurance. Employers may contract with their employees for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the public actuary certifies that the scheme is on the whole not less favorable to general body of employees and their dependents than the provisions of the act. In such case employer is liable only in accordance with the scheme.

Security of payments. When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of his becoming insolvent such workman has a first claim upon this sum, and any special magistrate may direct its payment into the savings bank to be applied to payment of compensations due.

Settlement of disputes. Disputes arising under the act are settled by the arbitration of existing committees representative of employers and employees, or, if either party objects, by a single arbitrator agreed on by the parties, or, in absence of agreement, by a special magistrate. An arbitrator appointed by the magistrate has all the powers of a local court.

SPAIN.

Date of enactment. January 30, 1900, in effect July 28, 1900.

Injuries compensated. All injuries by accidents to employees in the course of and by reason of the employment causing death or disability. Compensation may be reduced if injured person was engaged in an illegal act.

Industries covered. Manufacturing, mines, quarries, metallurgical establishments, construction work, industries injurious to health, transportation, gas and electric works, street cleaning, theaters, and agricultural and forestry establishments using power machinery.

Persons compensated. Workmen performing manual labor, including helpers and apprentices.

Government employees. Act applies to employees of state factories and other government establishments, to labor accidents in war and naval departments, and to establishments of provincial and communal governments.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death. In addition to any prior benefits paid for disability—

(*a*) Funeral expenses not exceeding 100 pesetas ($19.30).

(*b*) A lump sum equal to two years' earnings, if widow, and children or dependent orphan grandchildren under 16 years survive; eighteen months' earnings if only children or orphan grandchildren survive; one year's earnings if only widow survives; ten months' earnings to dependent parents or grand parents over 60 years of age, in absence of widow or children, if two or more survive; seven months' earnings if only one parent or grand parent survives.

(*c*) For these lump sum payments, by mutual consent, the following pensions may be substituted: 40 per cent of annual earnings when widow and children or grandchildren survive; 20 per cent of annual earnings when only widow survives; 10 per cent to each dependent parent or grand parent over 60 years of age, when no widow or children survive, but not over 30 per cent in the aggregate; compensation to widow ceases on her remarriage, and to children on their attaining the age of 16 years.

(*d*) In these cases, the daily earnings to be considered as not less than 1.50 pesetas (29 cents).

(*e*) All of these compensations are increased by 50 per cent if the establishment is lacking in the required safety provisions.

Compensation for disability:

(*a*) Free medical and surgical treatment during disability.

(*b*) Fifty per cent of daily earnings, including Sundays and holidays, from day of injury to day of recovery from disability, but not over one year, after which case is treated as one of permanent disability.

(*c*) In case of permanent disability, in addition to the foregoing, a sum equal to two years' earnings for total disability.

Eighteen months' earnings, if total disability extends only to former trade.

One year's earnings in cases of partial permanent disability for usual employment, unless the employer agrees to employ injured workmen at some other work at old rate of wages.

(*d*) In these cases, the daily earnings to be considered as not less than 1.50 pesetas (29 cents).

(*e*) Compensations are increased by 50 per cent if the establishment is lacking in the required safety provisions.

Revision of compensation. No special provision is made in the law.

Insurance. Employers may contract with authorized insurance companies to assume obligations imposed by law.

Security of payments. No special provision is made in the law.

Settlement of disputes. Disputes concerning compensation under the law may be carried to special permanent labor tribunals consisting of representatives of the State, employers, and employees.

SWEDEN.

Date of enactment. Approved July 5, 1901, in effect January 1, 1903; amended June 3, 1904.

Injuries compensated. Injuries by accidents to workmen resulting from the employment, and causing death or disability for more than sixty days, unless due to the willful act or gross negligence of the victim or to the willful act of a third person who has neither the supervision nor the direction of the work.

Industries covered. Practically all establishments engaged in forestry work, mining, quarrying, turf and ice cutting and handling, manufacturing, chimney sweeping, rafting, railway and tramway service, handling goods, building trades, conduit, road and other construction work, and electricity, gas, and water distribution. Employers in other industries may insure their employees in the State Insurance Institute and thereby be placed under provisions of the act. Employees in other industries may secure the protection of the act by insuring themselves in the State Insurance Institute.

Persons compensated. Workmen and foremen.

Government employees. Act applies to employees in the state and communal services when engaged in any of the industries enumerated above.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death. When death results from the injury within two years—

(*a*) Funeral benefit of 60 crowns ($16.08).

(*b*) Annual pensions not exceeding in the aggregate 300 crowns ($80.40), to be distributed to widow, until remarriage 120 crowns ($32.16); each child under 15 years of age 60 crowns ($16.08).

Compensation for disability.

(*a*) If permanently disabled, annual pension of 300 crowns ($80.40) in case of total disability, and a smaller sum corresponding to loss of earning power in case of partial disability, pension to begin with sixty-first day of disability, or later if permanent character of the disability was not then established.

(*b*) If temporarily disabled for more than sixty days, 1 crown (27 cents) per day beginning with sixty-first day.

Revision of compensation. Suit may be brought in a court of first instance by injured employee for a revision of compensation within two years from the date of the fixing of the same.

Insurance. If an injured person receives an allowance or pension from an organization which is supported entirely or in greater part by the employer, or if the victim is insured in a private organization by his employer, the amounts received from such a source may be deducted from payments required of employer under the act. Employers may transfer burden of payment of compensation by insuring in the State Insurance Institute, created for this purpose by the act, or in individual cases purchase annuities for pensioners from this institution. Other arrangements may be made between employers and employees if the State Insurance Institute finds upon examination that they are not unfavorable to the employees.

Security of payments. An employer may be required to furnish adequate security for the payment of the pension to cover the contingency of his neglecting to pay the same, of his retiring from business or leaving the country, or of his becoming insolvent. If he fails to furnish security he may be required to pay a lump sum equal to the capital value of the pension plus the payments and interest due, which amount, in the case of an injured employee, must be invested in the purchase of an annuity from the Royal Insurance Institute.

Settlement of disputes. Disputes may be settled either by arbitration or by bringing suit in a court of first instance. The demand for arbitration must be made or the suit brought within two years after the accident or in case of fatal accidents within two years after the death of the victim. If the action is against the State Insurance Institute, one year more is allowed.

WESTERN AUSTRALIA.

Date of enactment. February 19, 1902, in effect on a date fixed by the governor by order in council.

Injuries compensated. All injuries caused to a workman arising out of and in the course of the employment causing death or disability for at least two weeks, except when due to serious and willful misconduct of the workman injured.

Industries covered. Railways, waterworks, tramways, electric-light plants, factories, mines, quarries, engineering and building work, and employments declared by a proclamation of the governor, issued pursuant to addresses from both houses of parliament, to be dangerous or injurious to health or dangerous to life or limb.

Persons compensated. All persons engaged under contract in any employment.

Government employees. Act applies to all persons employed under the Crown to whom it would apply if employer were a private person.

Burden of payment. Entire cost of compensation rests upon employer.

Compensation for death:

(*a*) A sum equal to three years' earnings, but not less than £200 ($973.30) nor more than £400 ($1,946.60), to those wholly dependent upon earnings of deceased.

(*b*) A sum less than above amount if dependents were partly dependent upon deceased, to be agreed upon by the parties or fixed by local court.

(*c*) Reasonable expenses of medical attendance and burial not to exceed £100 ($486.65), if deceased leaves no dependents.

Compensation for disability:

(*a*) A weekly payment during disability after second week, not exceeding 50 per cent of injured person's average weekly earnings during the previous twelve months, such weekly payment not to exceed £2 ($9.73) and total liability not to exceed £300 ($1,459.95).

(*b*) In case of partial disability, regard is to be had to the difference between average weekly earnings before and after the accident, and to any payment other than wages made by employer on account of the injury.

(*c*) A lump sum may be substituted for weekly payments, after six months, on the application of the employer, the amount to be determined by the court in default of agreement.

Revision of benefits. Weekly payments may be revised by the court at request of either party.

Insurance. Employers may contract with their employees for substitution of a scheme of compensation, benefit, or insurance in place of the provisions of the act, if the registrar of friendly societies certifies that the scheme is on the whole not less favorable to the general body of employees and their dependents than the provisions of the act. In such case employer is liable only in accordance with this scheme.

Security of payments. When an employer becomes liable under the act to pay compensation, and is entitled to any sum from insurers on account of the amount due to a workman under such liability, then in the event of his becoming insolvent such workman has a first charge upon this sum for the amount so due. Compensation for injuries sustained in the course of employment in or about a mine, factory, building, or vessel is deemed a charge on the employer's interest in such property.

Settlement of disputes. Disputes arising under the act are settled by the local court of the district in which the injury is received.

BRITISH WORKMEN'S COMPENSATION ACT OF 1906.

In the following pages is given in full the text of the British Workmen's Compensation Act of 1906, enacted December 21, 1906, to take effect July 1, 1907. It is given here to show the present provisions of the British law in regard to the compensation of workmen for injuries received in their employment:

AN ACT to consolidate and amend the law with respect to compensation to workmen for injuries suffered in the course of their employment [21st December, 1906].

*Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:*

1.—(1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

(2) Provided that—

(*a*) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed:

(*b*) When the injury was caused by the personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or willful act as aforesaid:

(*c*) If it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement, be disallowed.

(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the person injured is a workman to whom this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

(5) Nothing in this act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

2.—(1) Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided always that—

(*a*) the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defense by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(*b*) the failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

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

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

3.—(1) If the registrar of friendly societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favor of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the registrar of friendly societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exist for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge

the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the registrar of friendly societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the registrar of friendly societies.

(7) The chief registrar of friendly societies shall include in his annual report the particulars of the proceedings of the registrar under this act.

(8) The chief registrar of friendly societies may make regulations for the purpose of carrying this section into effect.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed:

Provided that, where the contract relates to threshing, plowing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he and he alone shall be liable under this act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by arbitration under this act.

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

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

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

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

(3) There shall be included among the debts which under section one of the Preferential Payments in Bankruptcy Act, 1888, and section four of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case one hundred pounds [$486.65], due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the Preferential Payments in Bankruptcy Amendment Act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be

the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependents of a miner, shall have the like priority as is conferred on wages of miners by section nine of that act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

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

6. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as to the right to and amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this act.

7.—(1) This act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this act, and are members of the crew of any ship registered in the United Kingdom, or of any other British ship or vessel of which the owner, or (if there is more than one owner) the managing owner, or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:

(*a*) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident:

(*b*) In the case of the death of the master, seaman, or apprentice, the claim for compensation shall be made within six months after news of the death has been received by the claimant:

(*c*) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession, and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the Board of Trade, and such deposition or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections six hundred and ninety-one and six hundred and ninety-five of the Merchant Shipping Act, 1894, and those sections shall apply accordingly:

(*d*) In the case of the death of a master, seaman, or apprentice, leaving no dependents, no compensation shall be payable, if the owner of the ship is under the Merchant Shipping Act, 1894, liable to pay the expenses of burial:

(*e*) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the Merchant Shipping Act, 1894, as amended by any subsequent enactment, or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice:

(*f*) Any sum payable by way of compensation by the owner of a ship under this act shall be paid in full notwithstanding anything in section five hundred and three of the Merchant Shipping Act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this act

relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury:

(*g*) Subsections (2) and (3) of section one hundred and seventy-four of the Merchant Shipping Act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen, and apprentices lost with their ship as they apply with respect to proceedings for the recovery of wages due to seamen and apprentices; and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within eighteen months of the date at which the ship is deemed to have been lost with all hands:

(2) This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits or the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X. of the Merchant Shipping Act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

8.—(1) Where—

(i) the certifying surgeon appointed under the Factory and Workshop Act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this act and is thereby disabled from earning full wages at the work at which he was employed; or

(ii) a workman is, in pursuance of any special rules or regulations made under the Factory and Workshop Act, 1901, suspended from his usual employment on account of having contracted any such disease; or

(iii) the death of a workman is caused by any such disease;

and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependents shall be entitled to compensation under this act as if the disease or such suspension as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—

(*a*) The disablement or suspension shall be treated as the happening of the accident;

(*b*) If it is proved that the workman has at the time of entering the employment willfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable;

(*c*) The compensation shall be recoverable from the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due:

Provided that—

(i) the workman or his dependents if so required shall furnish that employer with such information as to the names and addresses of all other employers who employed him in the employment during the said twelve months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer upon proving that the disease was not contracted whilst the workman was in his employment shall not be liable to pay compensation; and

(ii) if that employer alleges that the disease was in fact contracted whilst the workman was in the employment of some other employer, and not whilst in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and

(iii) if the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the workman in the employment to the nature of which the disease was due shall be liable to make the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this act for settling the amount of the compensation;

(*d*) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable;

(*e*) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the workman has voluntarily left his employment.

(*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall in accordance with regulations made by the secretary of state be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule of this act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment, unless the employer proves the contrary.

(3) The secretary of state may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given:

Provided that—

(*a*) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine:

(*b*) Where a workman dies without having obtained a certificate of disablement, or is at the time of death not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the secretary of state may direct, a medical practitioner appointed by the secretary of state for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The secretary of state may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workmen engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the secretary of state may, by provisional order, require all employers in that industry to insure in the company or society upon such terms and under such conditions and subject to such exceptions as may be set forth in the order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the secretary of state may for the purposes of this provision treat the industry, as carried on by employers in that locality or of that class, as a separate industry.

(8) A provisional order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills, and any act confirming any provisional order under this section may be repealed, altered, or amended by a provisional order made and confirmed in like manner.

(9) Any expenses incurred by the secretary of state in respect of any such order, provisional order, or confirming bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this act.

9.—(1) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this act would apply if the employer were a private person:

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the royal household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section one of the Superannuation Act, 1887, and notwithstanding anything in that act, or any such warrant, may frame schemes with a view to their being certified by the registrar of friendly societies under this act.

10.—(1) The secretary of state may appoint such legally qualified medical practitioners to be medical referees for the purposes of this act as he may, with the sanction of the treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this act shall, subject to regulations made by the treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the second schedule to this act shall be paid out of moneys provided by Parliament in accordance with regulations made by the treasury.

11.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this act, and at any time that ship is found in any port or river of England or Ireland, or within three miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation, the person giving security shall be made defendant, and the production of the order of the judge, made in relation to the security, shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section six hundred and ninety-two of the Merchant Shipping Act, 1894, shall apply to the detention of a ship under this act as it applies to the detention of a ship under that act, and, if the owner of a ship is a corporation, it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

12.—(1) Every employer in any industry to which the secretary of state may direct that this section shall apply shall, on or before such day in every year as the secretary of state may direct, send to the secretary of state a correct return specifying the number of injuries in respect of which compensation has been paid by him under this act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the secretary of state may direct, and in default of complying with this section shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds [$24.33].

(2) Any regulations made by the secretary of state containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

13. In this act, unless the context otherwise requires,—

"Employer" includes any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this act, be deemed to continue to be the employer of the workman whilst he is working for that other person;

"Workman" does not include any person employed otherwise than by way of manual labor whose remuneration exceeds two hundred and fifty pounds [$1,216.63] a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprentice-

ship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is expressed or implied, is oral or in writing;

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom or for whose benefit compensation is payable;

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grand parent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grand parent so dependent upon his earnings shall include such an illegitimate child and parent or grand parent respectively;

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, stepson, step-daughter, brother, sister, half-brother, half-sister;

"Ship," "vessel," "seaman," and "port" have the same meanings as in the Merchant Shipping Act, 1894;

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is intrusted by or on behalf of the owner;

"Police force" means a police force to which the Police Act, 1890, or the Police (Scotland) Act, 1890, applies, the City of London Police Force, the Royal Irish Constabulary, and the Dublin Metropolitan Police Force;

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority;

"County court," "judge of the county court," "registrar of the county court," "plaintiff," and "rules of court," as respects Scotland, mean respectively sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

14. In Scotland, where a workman raises an action against his employer independently of this act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the Employers' Liability Act, 1880, or alternatively at common law or under the Employers' Liability Act, 1880, shall, notwithstanding anything contained in that act, not be removed under that act or otherwise to the court of session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this act shall apply.

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the Workmen's Compensation Act, 1897, for the provisions of that act) existing at the commencement of this act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

(2) Every scheme under the Workmen's Compensation Act, 1897, in force at the commencement of this act shall, if recertified by the registrar of friendly societies, have effect as if it were a scheme under this act.

(3) The registrar shall recertify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this act as to schemes.

(4) If any such scheme has not been so recertified before the expiration of six months from the commencement of this act, the certificate thereof shall be revoked.

16.—(1) This act shall come into operation on the first day of July, nineteen hundred and seven, but, except so far as it relates to references to medical referees, and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this act.

(2) The Workmen's Compensation Acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this act, except to the extent to which this act applies to those cases.

17. This act may be cited as the Workmen's Compensation Act, 1906.

FIRST SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

(1) The amount of compensation under this act shall be—

(*a*) where death results from the injury—

(i) if the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds [$729.98], whichever of those sums is the larger, but not exceeding in any case three hundred pounds [$1,459.95], provided that the amount of any weekly payments made under this act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer;

(ii) if the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this act, to be reasonable and proportionate to the injury to the said dependents; and

(iii) if he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding ten pounds [$48.67];

(*b*) where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound [$4.87];

Provided that—

(*a*) if the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(*b*) as respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than twenty shillings [$4.87], one hundred per cent shall be substituted for fifty per cent of his average weekly earnings, but the weekly payment shall in no case exceed ten shillings [$2.43].

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:—

(*a*) average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district;

(*b*) where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(*c*) employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the

time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(*d*) where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be paid during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependent shall, in default of agreement, be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependent shall be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependents nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependents of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the national debt commissioners through the Post Office Savings Bank, or be accepted by the postmaster-general as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting

the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this act shall be paid out, except upon authority addressed to the postmaster-general by the treasury or, subject to regulations of the treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post office savings bank under the provisions of this act may, nevertheless, open an account in a post office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the secretary of state, or at more frequent intervals than may be prescribed by those regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties, may, on payment by the applicants of such fee not exceeding one pound [$4.87] as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the secretary of state, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the secretary of state, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment, shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this act:

Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding one pound [$4.87].

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the em-

ployer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the national debt commissioners through the Post Office Savings Bank, purchase an annuity for the workman equal to seventy-five per cent of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: Provided that nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment, unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section eight, section sixteen, and section forty-one of the Friendly Societies Act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this act to Ireland the provisions of the County Officers and Courts (Ireland) Act, 1877, with respect to money deposited in the Post Office Savings Bank under that act shall apply to money invested in the Post Office Savings Bank under this act.

SECOND SCHEDULE.

ARBITRATION, ETC.

(1) For the purpose of settling any matter which under this act is to be settled by arbitration, if any committee, representative of any employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter, instead of being settled by the judge of the county court, may, if the lord chancellor so authorizes, be settled according to the like procedure, by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this act, have all the powers of that judge.

(4) The Arbitration Act, 1889, shall not apply to any arbitration under this act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission, or in any case where he himself settles the matter under this act, or where he gives any decision or makes any order under this act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the Supreme Court either party appeals to the court of appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death, or refusal or inability to act, of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this act has been ascertained, or any weekly payment varied, or any other matter decided under this act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party interested, to the registrar of the county court who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(*a*) no such memorandum shall be recorded before seven days after the despatch by the registrar of notice to the parties interested; and

(*b*) where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court, under the circumstances, may think just; and

(*c*) the judge of the county court may at any time rectify the register; and

(*d*) where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence, or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the judge who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(*e*) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependents, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(11) Where any matter under this act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of, the county court of the district in which all

the parties concerned reside, or if they reside in different districts the district prescribed by rules of court, without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this act authorizes rules of court to be made, and also generally for carrying into effect this act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of county courts appointed for the making of rules under section one hundred and sixty-four of the County Courts Act, 1888, and when allowed by the lord chancellor, as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph (15) of the first schedule to this act, shall be payable by any party in respect of any proceedings by or against a workman under this act in the court prior to the award.

(14) Any sum awarded as compensation shall, unless paid into court under this act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except such sum as may be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the secretary of state and the treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The secretary of state may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of an employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this act exclusively on county courts or judges of county courts, and may by the order provide how and to whom the compensation money is to be paid in cases where, but for the order, the money would be required to be paid into court, and the order may exclude from the operation of provisos (*d*) and (*e*) of paragraph (9) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the secretary of state to be necessary or proper for the purposes of the order.

(17) In the application of this schedule to Scotland—

(*a*) "County court judgment" as used in paragraph (9) of this schedule means a recorded decree arbitral:

(*b*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act, 1876, save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the court of session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords.

(*c*) Paragraphs (3), (4), and (8) shall not apply.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the court of appeal to the House of Lords.

THIRD SCHEDULE.

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

Where regulations or special rules made under any act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the secretary of state otherwise directs, include only the processes so specified.

CANADIAN INDUSTRIAL DISPUTES INVESTIGATION ACT OF 1907.

Following is given in full the text of the Canadian Industrial Disputes Investigation Act, enacted in March, 1907, to provide machinery for the settlement of labor disputes and to prevent strikes and lockouts in mines and public-utility industries. Although the act has been in effect but a short time, it has already been employed successfully in the adjustment of a considerable number of disputes affecting large numbers of workmen employed in mining and transportation.

AN ACT to aid in the prevention and settlement of strikes and lockouts in mines and industries connected with public utilities. (Assented to 22d March, 1907.)

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. This act may be cited as the Industrial Disputes Investigation Act, 1907.

PRELIMINARY.

Interpretation.

2. In this act, unless the context otherwise requires—

(*a*) "Minister" means the minister of labor;

(*b*) "Department" means the department of labor;

(*c*) "Employer" means any person, company or corporation employing ten or more persons and owning or operating any mining property, agency of transportation or communication, or public-service utility, including, except as hereinafter provided, railways, whether operated by steam, electricity or other motive power, steamships, telegraph and telephone lines, gas, electric-light, water and power works;

(*d*) "Employee" means any person employed by an employer to do any skilled or unskilled manual or clerical work for hire or reward in any industry to which this act applies;

(*e*) "Dispute" or "industrial dispute" means any dispute or difference between an employer and one or more of his employees, as to matters or things affecting or relating to work done or to be done by him or them, or as to the privileges, rights and duties of employers or employees (not involving any such violation thereof as constitutes an indictable offense); and, without limiting the general nature of the above definition, includes all matters relating to—

(1) The wages allowance or other remuneration of employees, or the price paid or to be paid in respect of employment;

(2) The hours of employment, sex, age, qualification or status of employees, and the mode, terms and conditions of employment;

(3) The employment of children or any person or persons or class of persons, or the dismissal of or refusal to employ any particular person or persons or class of persons;

(4) Claims on the part of an employer or any employee as to whether and, if so, under what circumstances, preference of employment should or should not be given to one class over another of persons being or not being members of labor or other organizations, British subjects or aliens;

(5) Materials supplied and alleged to be bad, unfit or unsuitable, or damage alleged to have been done to work;
(6) Any established custom or usage, either generally or in the particular district affected;
(7) The interpretation of an agreement or a clause thereof.
(*f*) "Lockout" (without limiting the nature of its meaning) means a closing of a place of employment, or a suspension of work, or a refusal by an employer to continue to employ any number of his employees in consequence of a dispute, done with a view to compelling his employees, or to aid another employer in compelling his employees, to accept terms of employment.
(*g*) "Strike" or "to go on strike" (without limiting the nature of its meaning) means the cessation of work by a body of employees acting in combination, or a concerted refusal or a refusal under a common understanding of any number of employees to continue to work for an employer, in consequence of a dispute, done as a means of compelling their employer, or to aid other employees in compelling their employer, to accept terms of employment;
(*h*) "Board" means a board of conciliation and investigation established under the provisions of this act;
(*i*) "Application" means an application for the appointment of a board under the provisions of this act;
(*j*) "Registrar" means the registrar of boards of conciliation and investigation under this act;
(*k*) "Prescribed" means prescribed by this act, or by any rules or regulations made thereunder;
(*l*) "Trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees.

Administration.

3. The minister of labor shall have the general administration of this act.
4. The governor in council shall appoint a registrar of boards of conciliation and investigation, who shall have the powers and perform the duties prescribed.
2. The office of registrar may be held either separately or in conjunction with any other office in the public service, and in the latter case the registrar may, if the governor in council thinks fit, be appointed, not by name, but by reference to such other office, whereupon the person who for the time being holds such office, or performs its duties, shall by virtue thereof be the registrar.

BOARDS OF CONCILIATION AND INVESTIGATION.

Constitution of boards.

5. Wherever any dispute exists between an employer and any of his employees, and the parties thereto are unable to adjust it, either of the parties to the dispute may make application to the minister for the appointment of a board of conciliation and investigation, to which board the dispute may be referred under the provisions of this act: *Provided, however*, That, in the case of a dispute between a railway company and its employees, such dispute may be referred, for the purpose of conciliation and investigation, under the provisions concerning railway disputes in the Conciliation and Labor Act.
6. Whenever, under this act, an application is made in due form for the appointment of a board of conciliation and investigation, and such application does not relate to a dispute which is the subject of a reference under the provisions concerning railway disputes in the Conciliation and Labor Act, the minister, whose decision for such purpose shall be final, shall, within fifteen days from the date at which the application is received, establish such board under his hand and seal of office, if satisfied that the provisions of this act apply.
7. Every board shall consist of three members, who shall be appointed by the minister.
2. Of the three members of the board one shall be appointed on the recommendation of the employer and one on the recommendation of the employees (the parties to the dispute), and the third on the recommendation of the members so chosen.
8. For the purposes of appointment of the members of the board, the following provisions shall apply:

1. Each party to the dispute may, at the time of making application or within five days after being requested so to do by the minister, recommend the name of one person who is willing and ready to act as a member of the board, and the minister shall appoint such person a member of the board.

2. If either of the parties fails or neglects to duly make any recommendation within the said period, or such extension thereof as the minister, on cause shown, grants, the minister shall, as soon thereafter as possible, appoint a fit person to be a member of the board; and such member shall be deemed to be appointed on the recommendation of the said party.

3. The members chosen on the recommendation of the parties may, within five days after their appointment, recommend the name of one person who is willing and ready to act as a third member of the board, and the minister shall appoint such person a member of the board.

4. If the members chosen on the recommendation of the parties fail or neglect to duly make any recommendation within the said period, or such extension thereof as the minister, on cause shown, grants, the minister shall, as soon thereafter as possible, appoint a fit person to be a third member of the board, and such member shall be deemed to be appointed on the recommendation of the two other members of the board.

5. The third member shall be the chairman of the board.

9. As soon as possible after the full board has been appointed by the minister, the registrar shall notify the parties of the names of the members of the board and the chairman thereof, and such notification shall be final and conclusive for all purposes.

10. Every member of a board shall hold office from the time of his appointment until the report of the board is signed and transmitted to the minister.

11. No person shall act as a member of the board who has any direct pecuniary interest in the issue of a dispute referred to such board.

12. Every vacancy in the membership of a board shall be supplied in the same manner as in the case of the original appointment of every person appointed.

13. Before entering upon the exercise of the functions of their office the members of a board, including the chairman, shall make oath or affirmation before a justice of the peace that they will faithfully and impartially perform the duties of their office, and also that, except in the discharge of their duties, they will not disclose to any person any of the evidence or other matter brought before the board.

14. The department may provide the board with a secretary, stenographer, or such other clerical assistance as to the minister appears necessary for the efficient carrying out of the provisions of this act.

Procedure for reference of disputes to boards.

15. For the purpose of determining the manner in which, and the persons by whom, an application for the appointment of a board is to be made, the following provisions shall apply:

1. The application shall be made in writing in the prescribed form, and shall be in substance a request to the minister to appoint a board to which the existing dispute may be referred under the provisions of this act.

2. The application shall be accompanied by—

(*a*) A statement setting forth—

(1) The parties to the dispute;

(2) The nature and cause of the dispute, including any claims or demands made by either party upon the other, to which exception is taken;

(3) An approximate estimate of the number of persons affected or likely to be affected by the dispute;

(4) The efforts made by the parties themselves to adjust the dispute; and—

(*b*) A statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof by the minister to a board of conciliation and investigation under the act, to the best of the knowledge and belief of the declarant, a lockout or strike, as the case may be, will be declared, and that the necessary authority to declare such lockout or strike has been obtained.

3. The application may mention the name of a person who is willing and ready and desires to act as a member of the board representing the party or parties making the application.

16. The application and the declaration accompanying it—

(1) If made by an employer, an incorporated company or corporation, shall be signed by some one of its duly authorized managers or other principal executive officers;

(2) If made by an employer other than an incorporated company or corporation, shall be signed by the employer himself in case he is an individual, or the majority of the partners or members in case of a partnership firm or association;

(3) If made by employees members of a trade union, shall be signed by two of its officers duly authorized by a majority vote of the members of the union, or by a vote taken by ballot of the members of the union present at a meeting called on not less than three days' notice for the purpose of discussing the question;

(4) If made by employees some or all of whom are not members of a trade union, shall be signed by two of their number duly authorized by a majority vote taken by ballot of the employees present at a meeting called on not less than three days' notice for the purpose of discussing the question.

17. Every application for the appointment of a board shall be transmitted by post by registered letter addressed to the registrar of boards of conciliation and investigation, department of labor, Ottawa, and the date of the receipt of such registered letter at the department shall be regarded as the date of the receipt of such application.

18. In every case where an application is made for the appointment of a board the party making application shall, at the time of transmitting it to the registrar, also transmit by registered letter to the other party to the dispute, or by personal delivery, a copy of the application and of the accompanying statement and declaration.

19. Upon receipt by either party to a dispute of a copy of the application for the appointment of a board such party shall, without delay, prepare a statement in reply to the application and transmit it by registered letter, or by personal delivery, to the registrar and to the party making the application.

20. Copies of applications or statements in reply thereto, to be transmitted to the other party under any of the preceding sections where the other party is—

(1) An employer, an incorporated company or corporation, shall be sent to the manager or other principal executive officer of the company or corporation;

(2) An employer other than an incorporated company or corporation, shall be sent to the employer himself or to the employer in the name of the business or firm as commonly known;

(3) Composed of employees, members of a trade union, shall be sent to the president and secretary of such union;

(4) Composed of employees some or all of whom are not members of a trade union,

(*a*) Where some of the employees are members of a trade union, shall be sent to the president and secretary of the union as representing the employees belonging to the union; also

(*b*) Where some of the employees are not members of a trade union and there are no persons authorized to represent such employees, shall be sent to ten of their number;

(*c*) Where, under paragraph (4) of section 16, two persons have been authorized to make an application, shall be sent to such two persons.

Functions, powers and procedure of boards.

21. Any dispute may be referred to a board by application in that behalf made in due form by any party thereto: *Provided*, That no dispute shall be the subject of reference to a board under this act in any case in which the employees affected by the dispute are fewer than ten.

22. Upon the appointment of the board the registrar shall forward to the chairman a copy of the application for the appointment of such board, and of its accompanying statement and declaration, and of the statement in reply, and the board shall forthwith proceed to deal with the matters referred to in these documents.

23. In every case where a dispute is duly referred to a board, it shall be the duty of the board to endeavor to bring about a settlement of the dispute, and to this end the board shall, in such manner as it thinks fit, expeditiously and care-

fully inquire into the dispute and all matters affecting the merits thereof and the right settlement thereof. In the course of such inquiry the board may make all such suggestions and do all such things as it deems right and proper for inducing the parties to come to a fair and amicable settlement of the dispute, and may adjourn the proceedings for any period the board thinks reasonable to allow the parties to agree upon terms of settlement.

24. If a settlement of the dispute is arrived at by the parties during the course of its reference to the board, a memorandum of the settlement shall be drawn up by the board and signed by the parties, and shall, if the parties so agree, be binding as if made a recommendation by the board under section 62 of this act, and a copy thereof with a report upon the proceedings shall be forwarded to the minister.

25. If a settlement of the dispute is not arrived at during the course of its reference to the board, the board shall make a full report thereon to the minister, which report shall set forth the various proceedings and steps taken by the board for the purpose of fully and carefully ascertaining all the facts and circumstances, and shall also set forth such facts and circumstances, and its findings therefrom, including the cause of the dispute and the board's recommendation of the settlement for the dispute according to the merits and substantial justice of the case.

26. The board's recommendation shall deal with each item of the dispute, and shall state in plain terms, and avoiding as far as possible all technicalities, what in the board's opinion ought or ought not to be done by the respective parties concerned. Wherever it appears to the board expedient so to do, its recommendation shall also state the period during which the proposed settlement should continue in force, and the date from which it should commence.

27. The board's report and recommendation shall be made to the minister in writing, and shall be signed by such of the members as concur therein, and shall be transmitted by the chairman by registered letter to the registrar as soon as practicable after the reference of the dispute to the board; and in the same manner a minority report may be made by any dissenting member of the board.

28. Upon receipt of the board's report the minister shall forthwith cause the report to be filed in the office of the registrar and a copy thereof to be sent free of charge to the parties to the dispute, and to the representative of any newspaper published in Canada who applies therefor, and the minister may distribute copies of the report, and of any minority report, in such manner as to him seems most desirable as a means of securing a compliance with the board's recommendation. The registrar shall, upon application, supply certified copies for a prescribed fee, to persons other than those mentioned in this section.

29. For the information of Parliament and the public, the report and recommendation of the board, and any minority report, shall, without delay, be published in the Labor Gazette, and be included in the annual report of the department of labor to the governor-general.

30. For the purpose of its inquiry the board shall have all the powers of summoning before it, and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters) and to produce such books, papers or other documents or things as the board deems requisite to the full investigation of the matters into which it is inquiring, as is vested in any court of record in civil cases.

2. Any member of the board may administer an oath, and the board may accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

31. The summons shall be in the prescribed form, and may require any person to produce before the board any books, papers or other documents or things in his possession or under his control in any way relating to the proceedings.

32. All books, papers and other documents or things produced before the board, whether voluntarily or in pursuance to summons, may be inspected by the board, and also by such parties as the board allows; but the information obtained therefrom shall not, except in so far as the board deems expedient, be made public, and such parts of the books, papers or other documents as in the opinion of the board do not relate to the matter at issue may be sealed up.

33. Any party to the proceedings shall be competent and may be compelled to give evidence as a witness.

34. Every person who is summoned and duly attends as a witness shall be entitled to an allowance for expenses according to the scale for the time being

in force with respect to witnesses in civil suits in the superior courts in the province where the inquiry is being conducted.

35. Where a reference has been made to the board of a dispute between a railway company and its employees, any witness summoned by the board in connection with the dispute shall be entitled to free transportation over any railway en route when proceeding to the place of meeting of the board and thereafter returning to his home, and the board shall furnish to such witness a proper certificate evidencing his right to such free transportation.

36. If any person who has been duly served with such summons and to whom at the same time payment or tender has been made of his reasonable traveling expenses according to the aforesaid scale, fails to duly attend or to duly produce any book, paper or other document or thing as required by his summons, he shall be guilty of an offense and liable to a penalty not exceeding one hundred dollars, unless he shows that there was a good and sufficient cause for such failure.

37. If, in any proceedings before the board, any person willfully insults any member of the board or willfully interrupts the proceedings, or without good cause refuses to give evidence, or is guilty in any other manner of any willful contempt in the face of the board, any officer of the board or any constable may take the person offending into custody and remove him from the precincts of the board, to be detained in custody until the rising of the board, and the person so offending shall be liable to a penalty not exceeding one hundred dollars.

38. The board, or any member thereof, and, on being authorized in writing by the board, any other person, may, without any warrant than this act, at any time, enter any building, mine, mine workings, ship, vessel, factory, workshop, place or premises of any kind, wherein, or in respect of which, any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking place or has taken place, which has been made the subject of a reference to the board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any persons in or upon any such building, mine, mine workings, ship, vessel, factory, workshop, place or premises as aforesaid, in respect of or in relation to any matter or thing hereinbefore mentioned, and any person who hinders or obstructs the board or any such person authorized as aforesaid, in the exercise of any power conferred by this section, shall be guilty of an offense and be liable to a penalty not exceeding one hundred dollars.

39. Any party to a reference may be represented before the board by three or less than three persons designated for the purpose, or by counsel or solicitor where allowed as hereinafter provided.

40. Every party appearing by a representative shall be bound by the acts of such representative.

41. No counsel or solicitor shall be entitled to appear or be heard before the board, except with the consent of the parties to the dispute, and notwithstanding such consent the board may decline to allow counsel or solicitors to appear.

42. Persons other than British subjects shall not be allowed to act as members of a board.

43. If, without good cause shown, any party to proceedings before the board fails to attend or to be represented, the board may proceed as if he had duly attended or had been represented.

44. The sittings of the board shall be held at such time and place as are from time to time fixed by the chairman, after consultation with the other members of the board, and the parties shall be notified by the chairman as to the time and place at which sittings are to be held: *Provided*, That so far as practicable, the board shall sit in the locality within which the subject-matter of the proceeding before it arose.

45. The proceedings of the board shall be conducted in public: *Provided*, That at any such proceedings before it, the board, on its own motion, or on the application of any of the parties, may direct that the proceedings shall be conducted in private and that all persons other than the parties, their representatives, the officers of the board and the witnesses under examination shall withdraw.

46. The decision of a majority of the members present at a sitting of the board shall be the decision of the board, and the findings and recommendations of the majority of its members shall be those of the board.

47. The presence of the chairman and at least one other member of the board shall be necessary to constitute a sitting of the board.

48. In case of the absence of any one member from a meeting of the board the other two members shall not proceed, unless it is shown that the third member has been notified of the meeting in ample time to admit of his attendance.

2. If any member of a board dies, or becomes incapacitated, or refuses or neglects to act, his successor shall be appointed in the manner provided with respect to the original member of the board.

49. The board may at any time dismiss any matter referred to it which it thinks frivolous or trivial.

50. The board may, with the consent of the minister, employ competent experts or assessors to examine the books or official reports of either party, and to advise it upon any technical or other matter material to the investigation, but shall not disclose such reports or the results of such inspection or examination under this section without the consent of both the parties to the dispute.

Remuneration and expenses of board.

51. The members of a board while engaged in the adjustment of a dispute shall be remunerated for their services as follows:

(*a*) To members other than the chairman—

(i) An allowance of five dollars a day for a time not exceeding three days during which the members may be actually engaged in selecting a third member of the board;

(ii) An allowance of fifteen dollars for each whole day's sittings of the board;

(iii) An allowance of seven dollars for each half-day's sittings of the board;

(*b*) The chairman shall be allowed twenty dollars a day for each whole day's sittings of the board, and ten dollars a day for each half-day's sittings;

(*c*) No allowance shall be made to any member of the board on account of any sitting of the board which does not extend over a half day, unless it is shown to the satisfaction of the minister that such meeting of the board was necessary to the performance of its duties as speedy as possible, and that the causes which prevented a half-day's sitting of the board were beyond its control.

52. No member of the board shall accept in addition to his salary as a member of the board any perquisite or gratuity of any kind, from any corporation, association, partnership or individual in any way interested in any matter or thing before or about to be brought before the board in accordance with the provisions of this act. The accepting of such perquisite or gratuity by any member of the board shall be an offense and shall render such member liable to a fine not exceeding one thousand dollars.

53. Each member of the board will be entitled to his actual necessary traveling expenses for each day that he is engaged in traveling from or to his place of residence for the purpose of attending or after having attended a meeting of the board.

54. All expenses of the board, including expenses for transportation incurred by the members thereof or by persons under its order in making investigations under this act, salaries of employees and agents, and fees and mileage to witnesses shall be allowed and paid upon the presentation of itemized vouchers therefor, approved by the chairman of the board, which vouchers shall be forwarded by the chairman to the minister. The chairman shall also forward to the minister a certified and detailed statement of the sittings of the board, and of the members present at such sittings.

DUTIES OF THE REGISTRAR.

55. It shall be the duty of the registrar:

(*a*) To receive and register, and, subject to the provisions of this act, to deal with all applications by employers or employees for a reference of any dispute to a board, and to at once bring to the minister's attention every such application;

(*b*) To conduct such correspondence with the parties and members of boards as may be necessary to constitute any board as speedily as possible in accordance with the provisions of this act;

(c) To receive and file all reports and recommendations of boards, and conduct such correspondence and do such things as may assist in rendering effective the recommendations of the boards, in accordance with the provisions of this act;

(*d*) To keep a register in which shall be entered the particulars of all applications, references, reports and recommendations relating to the appointment of a board, and its proceedings; and to safely keep all applications, statements, reports, recommendations and other documents relating to proceedings before the board, and, when so required, transmit all or any of such to the minister;

(*e*) To supply to any parties, on request, information as to this act, or any regulations or proceedings thereunder, and also to furnish parties to a dispute and members of the board with necessary blank forms, forms of summons or other papers or documents required in connection with the effective carrying out of the provisions of this act;

(*f*) Generally, to do all such things and take all such proceedings as may be required in the performance of his duties prescribed under this act or any regulations thereunder.

STRIKES AND LOCKOUTS PRIOR TO AND PENDING A REFERENCE TO A BOARD ILLEGAL.

56. It shall be unlawful for any employer to declare or cause a lockout, or for any employee to go on strike, on account of any dispute prior to or during a reference of such dispute to a board of conciliation and investigation under the provisions of this act, or prior to or during a reference under the provisions concerning railway disputes in the Conciliation and Labor Act: *Provided*, That nothing in this act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lockout or strike: *Provided also*, That, except where the parties have entered into an agreement under section 62 of this act, nothing in this act shall be held to restrain any employer from declaring a lockout, or any employee from going on strike in respect of any dispute which has been duly referred to a board and which has been dealt with under section 24 or 25 of this act, or in respect of any dispute which has been the subject of a reference under the provisions concerning railway disputes in the Conciliation and Labor Act.

57. Employers and employees shall give at least thirty days' notice of an intended change affecting conditions of employment with respect to wages or hours; and in every case where a dispute has been referred to a board, until the dispute has been finally dealt with by the board, neither of the parties nor the employees affected shall alter the conditions of employment with respect to wages or hours, or on account of the dispute do or be concerned in doing, directly or indirectly, anything in the nature of a lockout or strike, or a suspension or discontinuance of employment or work, but the relationship of employer and employee shall continue uninterrupted by the dispute, or anything arising out of the dispute; but if, in the opinion of the board, either party uses this or any other provision of this act for the purposes of unjustly maintaining a given condition of affairs through delay, and the board so reports to the minister, such party shall be guilty of an offense, and liable to the same penalties as are imposed for a violation of the next preceding section.

58. Any employer declaring or causing a lockout contrary to the provisions of this act shall be liable to a fine of not less than one hundred dollars, nor more than one thousand dollars for each day or part of a day that such lockout exists.

59. Any employee who goes on strike contrary to the provisions of this act shall be liable to a fine of not less than ten dollars nor more than fifty dollars, for each day or part of a day that such employee is on strike.

60. Any person who incites, encourages or aids in any manner any employer to declare or continue a lockout, or any employee to go or continue on strike contrary to the provisions of this act, shall be guilty of an offense and liable to a fine of not less than fifty dollars nor more than one thousand dollars.

61. The procedure for enforcing penalties imposed or authorized to be imposed by this act shall be that prescribed by Part XV. of The Criminal Code, relating to summary convictions.

SPECIAL PROVISIONS.

62. Either party to a dispute which may be referred under this act to a board may agree in writing, at any time before or after the board has made its report and recommendation, to be bound by the recommendation of the board in the same manner as parties are bound upon an award made pursuant to a reference to arbitration on the order of a court of record; every

agreement so to be bound made by one party shall be forwarded to the registrar who shall communicate it to the other party, and if the other party agrees in like manner to be bound by the recommendation of the board, then the recommendation shall be made a rule of the said court on the application of either party and shall be enforceable in like manner.

63. In the event of a dispute arising in any industry or trade other than such as may be included under the provisions of this act, and such dispute threatens to result in a lockout or strike, or has actually resulted in a lockout or strike, either of the parties may agree in writ- [writing] to allow such dispute to be referred to a board of conciliation and investigation, to be constituted under the provisions of this act.

2. Every agreement to allow such reference shall be forwarded to the registrar, who shall communicate it to the other party, and if such other party agrees in like manner to allow the dispute to be referred to a board, the dispute may be so referred as if the industry or trade and the parties were included within the provisions of this act.

3. From the time that the parties have been notified in writing by the registrar that in consequence of their mutual agreement to refer the dispute to a board under the provisions of this act, the minister has decided to refer such dispute, the lockout or strike, if in existence, shall forthwith cease, and the provisions of this act shall bind the parties.

MISCELLANEOUS.

64. No court of the Dominion of Canada, or of any Province or territory thereof, shall have power or jurisdiction to recognize or enforce, or to receive in evidence any report of a board, or any testimony or proceedings before a board, as against any person or for any purpose, except in the case of the prosecution of such person for perjury.

65. No proceeding under this act shall be deemed invalid by reason of any defect of form or any technical irregularity.

66. The minister shall determine the allowance or amounts to be paid to all persons other than the members of a board, employed by the Government or any board, including the registrar, secretaries, clerks, experts, stenographers or other persons performing any services under the provisions of this act.

67. In case of prosecutions under this act, whether a conviction is or is not obtained, it shall be the duty of the clerk of the court before which any such prosecution takes place to briefly report the particulars of such prosecution to the registrar within thirty days after it has been determined, and such clerk shall be entitled to a prescribed fee in payment of his services.

68. The governor in council may make regulations as to the time within which anything hereby authorized shall be done, and also as to any other matter or thing which appears to him necessary or advisable to the effectual working of the several provisions of this act. All such regulations shall go into force on the day of the publication thereof in The Canada Gazette, and they shall be laid before Parliament within fifteen days after such publication, or, if Parliament is not then in session, within fifteen days after the opening of the next session thereof.

69. All charges and expenses incurred by the Government in connection with the administration of this act shall be defrayed out of such appropriations as are made by Parliament for that purpose.

70. An annual report with respect to the matters transacted by him under this act shall be made by the minister to the governor-general, and shall be laid before Parliament within the first fifteen days of each session thereof.

BRITISH TRADE DISPUTES ACT OF 1906.

The text of the British Trade Disputes Act of 1906 is given in full in the following pages in response to numerous inquiries in regard to the subject. The decision in the Taff Vale case, which was the immediate cause of the enactment of this law, and the legal position of labor unions as the result of the decision, were discussed in Bulletin No. 70 of this Bureau and more at length in Bulletin No. 50, and need not be reproduced here.

AN ACT to provide for the regulation of trades unions and trade disputes [21st December 1906].

*Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:*

1. The following paragraph shall be added as a new paragraph after the first paragraph of section three of the Conspiracy and Protection of Property Act, 1875 [a]:

"An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable."

2.—(1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

(2) Section seven of the Conspiracy and Protection of Property Act, 1875 [b], is hereby repealed from "attending at or near" to the end of the section.

3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labor as he wills.

4.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

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[a] The first paragraph of section 3 of the Conspiracy and Protection of Property Act, 1875, here referred to, reads as follows:

An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

[b] The part of section 7 of the Conspiracy and Protection of Property Act, 1875, which is repealed by the above paragraph reads as follows:

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section. ("Watching" and "besetting" are prohibited.)

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trades Union Act, 1871, section nine ([a]), except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

5.—(1) This act may be cited as the Trade Disputes Act, 1906, and the Trade Union Acts, 1871 and 1876, and this act may be cited together as the Trade Union Acts, 1871 to 1906.

(2) In this act the expression "trade union" has the same meaning as in the Trade Union Acts, 1871 and 1876 ([b]), and shall include any combination as therein defined, notwithstanding that such combination may be the branch of a trade union.

(3) In this act and in the Conspiracy and Protection of Property Act, 1875, the expression "trade dispute" means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or nonemployment or the terms of the employment, or with the conditions of labor, of any person, and the expression "workmen" means all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arises; and, in section three of the last-mentioned act, the words "between employers and workmen" shall be repealed.

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[a] Section 9 of the Trade Union Act, 1871, here referred to, reads as follows:

The trustees of any trade union registered under this act, or any other officer of such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any court of law or equity touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place: and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

[b] The expression "trade union" is defined by the Trade Union Acts, 1871 and 1876, as follows:

The term "trade union" means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade:

Provided, That this act shall not affect—

1. Any agreement between partners as to their own business;

2. Any agreement between an employer and those employed by him as to such employment;

3. Any agreement in consideration of the sale of the good will of a business or of introduction in any profession, trade, or handicraft.

RECENT REPORTS OF STATE BUREAUS OF LABOR STATISTICS.

IOWA.

Twelfth Biennial Report of the Bureau of Labor Statistics for the State of Iowa. 1905, 1906. Edward D. Brigham, Commissioner. 272 pp.

In this report the following subjects are presented: Factory inspection, 37 pages; graded wages and salaries, 69 pages; new industries, 30 pages; immigration, 25 pages; wage-earners, 35 pages; railroad employees, 15 pages; employers' statistical report, 44 pages; the canning industry, 9 pages.

GRADED WAGES AND SALARIES.—This is a compilation, embracing 405 establishments in 104 lines of business, showing by occupation and sex the maximum, medium, and minimum wages paid per hour, day, week, month, or year in 42 counties of the State. The number of hours worked per day and per week, together with the wage changes for the year 1905, are also given.

NEW INDUSTRIES.—The subject-matter of this inquiry consists of information from 72 counties of the State, and is presented in two parts. The first part shows, by counties, the number and kind of manufacturing industries (employing 5 or more persons) and the business houses (wholesale and retail) established since 1904; also a list of 25 cities or towns in the State contiguous to streams capable of furnishing water power for manufacturing purposes. The second part shows, by counties, the number and kind of new industries, manufacturing and mercantile, desired in each locality, together with the natural or acquired advantages and the inducements offered.

WAGE-EARNERS.—Data furnished by 407 individual wage-earners of the State engaged in 53 occupations relating to hours of labor per day, wages, annual earnings, savings, conditions of employment, amount of insurance carried, ownership of home, changes in hours and wages, etc., are presented in this chapter. The total wages earned during 1905 by 340 wage-earners who reported was $281,761, or an average of $828.71 for each. Savings for the year amounted to $44,847 by the 315 persons who reported, or an average of $142.37 for each. Life insurance averaging $2,158 per individual was carried by 314 wage-earners, and 181 carried fire insurance on their homes to the extent of $195,100, or an average of $1,077.90 for each. Home owners numbered 81, who valued their property at $155,250, or an

average of $1,916.67, none of the homes being unincumbered, while 80 reported an equity of $104,143 in property valued at $191,690.

RAILROAD EMPLOYEES.—This is an investigation of the conditions surrounding the employment of railroad men in the transportation branch of the service and a record of the accidents to railroad employees within the State during the year 1905, and of accidents to employees, passengers, and others during the period 1878 to 1905. Returns from the railroad employees show that the average run per month was 3,430 miles for 22 conductors on 5 different systems, 2,951 miles for 42 engineers on 9 different systems, 3,038 miles for 23 firemen on 6 different systems, and 2,772 miles for 22 trainmen on 6 different systems. For conductors the rate of pay was $3.45 per 100 miles, the reported average yearly earnings being $1,304.65; for engineers the rate of pay ranged from $3.80 to $4.80 per 100 miles, the reported average yearly earnings being $1,410; for firemen the rate of pay ranged from $2.30 to $3 per 100 miles, the reported average yearly earnings being $882.47, and for trainmen the rate of pay was $2.29 per 100 miles, the reported average yearly earnings being $757.

EMPLOYERS' STATISTICAL REPORT.—These returns, presented in two tables, cover the year 1905, and were furnished by employers in 882 industrial establishments, in 66 counties of the State, in which 35,551 persons were employed, 29,488 being wage-workers and 6,063 salaried employees.

The first table, arranged by counties, gives in detail character of industry, number of establishments reporting, number of employees (men, women, and children), hours worked per day, days in operation during the year, increases and decreases in wages, and amount paid in wages during the year to each class of wage-workers (men, women, and children). In addition there is given the amount paid in salaries during the year to men and women, together with the number employed of each sex.

The second table summarizes, by counties, the data presented in the first table. It shows that the 29,488 persons employed as wage-workers in the 882 establishments earned during 1905 the sum of $14,576,187. Of the total, 24,060 men earned $13,245,837; 4,645 women earned $1,202,047, and 783 children under 16 years of age earned $128,303. The average annual earnings of the men were $550.53; of the women, $258.78, and of the children under 16 years of age, $163.86. To the 6,063 salaried employees the sum of $4,655,432 was paid, $4,045,538 to 4,638 men and $609,894 to 1,425 women. The average annual salary received by the men was $872.26 and by the women $427.99. The average number of persons employed in each of the 882 establishments was 40, the average hours worked per day 9.95, and the average number of days per year 298. During the year 4,677 persons received an increase of pay averaging 8.64 per cent.

THE CANNING INDUSTRY.—The information relating to this industry is presented, by counties, in two tables. In the first table is shown for 1905 the number of plants reporting, time in operation, number of men, women, and children employed, hours worked per day, and amount paid in wages during the year to each class of wage-workers; also the number of men and women employed on salary, together with the total amount paid each class during the year. The second table is a list of graded hourly rates showing that paid in each of the different occupations of the industry, hours worked per day and per week, and changes in the rates paid during 1905.

MAINE.

Twentieth Annual Report of the Bureau of Industrial and Labor Statistics for the State of Maine. 1906. Samuel W. Matthews, Commissioner. 221 pp.

In this report the subjects following are presented: Factories, mills, and shops built during 1906, 5 pages; labor unions, 71 pages; Stockton Harbor, Maine's new seaport, 17 pages; manufacturing industries, 18 pages; the Haskell silk mill, 4 pages; the paper-box industry, 3 pages; the pulp and paper industry, 69 pages; railroads, 5 pages; report of the inspector of factories, workshops, mines, and quarries, 13 pages.

FACTORIES, MILLS, AND SHOPS BUILT.—Returns show that in 1906 in 105 towns 132 buildings were erected or enlarged, remodeled, etc., at a total cost of $2,937,500. These improvements provided for 3,724 additional employees.

A summary of improvements of this character is presented for the ten years 1897 to 1906:

FACTORIES, MILLS, AND SHOPS BUILT OR ENLARGED, ETC., DURING THE YEARS 1897 TO 1906.

Year.	Number of towns.	Number of buildings.	Aggregate cost.	New employees.
1897	74	95	$827,600	2,339
1898	64	72	675,100	2,024
1899	103	138	6,800,700	4,990
1900	114	167	2,174,825	5,539
1901	94	121	5,638,200	6,337
1902	91	129	2,776,930	5,017
1903	96	124	1,436,900	3,343
1904	91	113	1,175,500	3,276
1905	93	114	2,303,410	3,329
1906	105	132	2,937,500	3,724

LABOR UNIONS.—Under this title is given a list of all federations and unions reporting, together with the addresses of the secretaries. There were 2 State and 11 central federations and 215 local unions

in 54 cities, towns, and plantations. Of the local unions known to exist in 1906, 5 failed to report membership and 14 sent no report. The reports from the unions give, by cities and towns, the date of organization, the membership, the qualifications for membership, the initiation fees, dues, benefits allowed, the hours of labor, rates of wages, etc. The 196 local unions reporting comprised a membership of 14,772.

To the question, "What have you accomplished for labor by organization?" a wide range of replies was returned by the unions; but a majority of them asserted that higher wages and a shorter workday had been gained. To the question, "Do nonunion men enjoy the same conditions as to labor, wages, and steady employment as union men?" 190 unions made reply, 89 indicating that nonunion men enjoy equal conditions with union men and 101 that they do not.

Under this chapter is also given a discussion of the apprenticeship system, and the rules of the various unions governing apprentices, together with a history of the labor demands and disputes occurring during the year.

MANUFACTURING INDUSTRIES.—The data presented in this chapter are compiled from the United States census of manufactures of Maine for 1905. Comparisons are also made with the United States census of manufactures for 1900.

THE PAPER-BOX INDUSTRY.—A general description of the more important paper-box factories in the State is given under this title, together with statistics of the industry for the entire State, for the United States, and for six States in which the industry is most prominent. In Maine, in 1905, there were 9 paper-box factories, with a capital of $144,900, which gave employment to 222 hands, to whom was paid in wages $70,416. The sum of $106,191 was paid for materials and the product was valued at $236,149.

THE PULP AND PAPER INDUSTRY.—At the present time the making of pulp and paper is the leading manufacturing industry of Maine. The investigation considered in this report is confined principally to the year 1906. However, as a matter of general interest, and for purposes of comparison with other States, a list is presented of the States where the manufacture of pulp and paper in 1904 was a prominent industry, showing the value of the product in each State. Also, there is given a synopsis of the industry in the United States for the year 1904 compared with 1899, followed by a similar synopsis of the industry in the State of Maine.

The returns for 1906 give, by towns, a general description of each establishment, stating kind and degree of power used, kind of machinery, kind and amount of materials used, kind and amount of product, number of employees, etc. During the year the manufac-

ture of pulp and paper was carried on in 31 pulp mills and 28 paper mills comprised in 38 different establishments, employing 8,606 work people (8,250 men and 356 women). To these employees a total of $4,820,268 was paid in wages, and they turned out a product valued at $34,617,666. There were under construction during the year 8 pulp mills and 4 paper mills, 5 of the pulp mills and 3 of the paper mills constituting 5 new establishments.

The chapter concludes with three contributed papers, as follows, relating to the industry: "History of paper making in Maine, and the future of the industry;" "Chemical wood pulp and paper—how made," and "Maine forests, their preservation, taxation, and value."

RAILROADS.—For the year ending June 30, 1906, there were 8,843 persons, including general officers, in the service of the 20 steam railroads operating in the State. The aggregate amount of wages, including salaries, paid during the year was $5,084,191.82. The number of employees, excluding general officers, was 8,781, an increase of 71 over 1905. The total number of days worked by employees, other than general officers, was 2,549,607, and the total amount paid this class of employees in wages was $4,909,906.08. The average daily wages of the same class was $1.93, an increase from $1.88 for the year 1905. Statements are presented showing for the years 1905 and 1906 the total mileage, gross earnings, passengers carried, freight hauled, passenger and freight train mileage, etc.

The number of men employed, including general officers, upon the street railways of Maine for the year ending June 30, 1906, was 1,336. To these were paid wages and salaries aggregating $834,464.35.

Accidents on steam railroads for the year ending June 30, 1906, resulted in 38 persons being killed and 222 injured by the movement of trains. Of those killed, 17 were employees, 2 were passengers, and 19 were other persons; of those injured, 136 were employees, 54 were passengers, and 32 were other persons. On the street railways accidents resulted in 7 persons being killed and 48 persons injured. Of those killed, 3 were passengers and 4 were other persons; of those injured, 6 were employees, 37 were passengers, and 5 were other persons.

CHILD LABOR.—In the report on factory inspection tables are presented in which it is shown that the number of children working under certificates in certain manufacturing establishments of the State was 813 in 1905 and 877 in 1906. The factory inspector recommends additional legislation regulating child labor in the State.

MARYLAND.

Fifteenth Annual Report of the Bureau of Statistics and Information of Maryland, 1906. Charles J. Fox, Chief. 214 pp.

In this report the subjects following are presented: The child-labor law, 35 pages; inspection of clothing and other manufactures, 23 pages; strikes and lockouts, 55 pages; free employment agency, 8 pages; cost of living, 19 pages; in labor circles, 11 pages; agricultural statistics, 1906, 3 pages; new incorporations, 1906, 25 pages; immigration, 5 pages; State reports, 9 pages; conferences and conventions, 2 pages; financial statement of the bureau, 1 page.

THE CHILD-LABOR LAW.—The State legislature of 1906 placed upon the labor bureau the work of enforcing what is generally known as the child-labor law. In this chapter is given the results of the work of six months under this law—from July 1 to December 31, 1906. To children between 12 and 16 years of age 10,289 labor permits were issued, 5,896 to boys and 4,393 to girls. Of the total permits issued 9,294 were for Baltimore City, 5,251 to boys and 4,043 to girls. Applicants for permits to the number of 1,046 were refused.

A summary of the work of the various district inspectors shows that in 90 manufacturing establishments, with salesrooms, visited there were 248 boys and 129 girls under 16 years of age employed, whose weekly earnings averaged $2.64½; that in 356 stores, mercantile establishments, and offices visited there were 565 boys and 177 girls under 16 years of age employed, whose weekly earnings averaged $3.48, and that in 949 manufacturing establishments visited there were 1,175 boys and 1,688 girls under 16 years of age employed, whose weekly earnings averaged $3.64½. Also, there is given the degree of intelligence of the children, hours of labor per day and time allowed for lunch, sanitary condition of surroundings, etc.

The chapter, further, contains a report on the applications for relief investigated by the Charity Organization Society and the Association for the Improvement of the Condition of the Poor, the need of relief being based upon the alleged loss of wages of children to whom labor permits had been refused. Cases in the counties outside of Baltimore were investigated by the secretary of the Maryland Child-Labor Committee, whose report closes the chapter.

INSPECTION OF CLOTHING AND OTHER MANUFACTURES.—During the year 1906 the work of inspecting establishments where clothing and other articles are made which come under the act commonly known as the "sweat shop law" was vigorously pursued and with satisfactory results. It is stated that the old-time sweat shop has in large measure been eliminated from the manufacture of clothing in the city of Baltimore. The opinion of the State court of appeals declaring the

factory and workshop inspection law constitutional has practically revolutionized conditions in the garment-making trades.

After inspection and report thereon, during the year 1906 there were 1,441 permits issued to contractors and individuals to work and employ 25,822 people in the manufacture, chiefly, of various articles pertaining to the clothing trade. Of the total permits, 929 were issued to proprietors of factories and workshops and 512 to proprietors who worked in tenements and dwellings. The number of people who were authorized to be employed in the factories and workshops aggregated 24,519, and in the tenements and dwellings 1,303. Of children under 16 years of age there were employed 173 males and 583 females; of those under 14 years of age there were employed 54 males and 104 females. Tables, by inspection districts, give in detail number of employees by age and sex, hours of labor per day, kind of articles made, and conditions, sanitary, social, etc., existing in connection with each tenement, dwelling, and factory inspected.

STRIKES AND LOCKOUTS.—There are given for the year 1906 statistics of 24 strikes, which threw out of employment 2,051 persons (1,742 males and 309 females), with an estimated wage loss of $103,762. Of the 24 strikes reported, 15 were ordered by organizations and 9 were not; 9 were for increase of wages, 5 were against the employment of nonunion men, 4 were for reduction of hours of labor, and 6 were for other causes; 7 strikes were successful, 4 were partly successful, and 13 were unsuccessful. A brief description is given of each strike, together with an account of several minor labor troubles which could not be characterized as strikes. No lockouts were reported for the year.

FREE EMPLOYMENT AGENCY.—During 1906, the year covered by this report, there were 644 applications for positions—617 by males and 27 by females. Of the applicants, 231 were laborers, 63 were clerks, 46 were watchmen, 30 were carpenters, 27 were timekeepers, 24 were drivers, and the remainder were distributed among various occupations. Applications for help numbered 521—for male help, 459; for female help, 62. There were 141 positions filled—129 by males and 12 by females. As to character of positions filled, 113 were laborers, 12 were farm hands, 7 were general houseworkers, etc.

COST OF LIVING.—Under this title comparative prices of various articles of food and fuel in the Baltimore markets are presented for the years 1892, 1895, 1905, and 1906. A table is also given showing the average monthly retail prices of the principal articles of food for 1906 compiled from prices quoted in the daily papers of Baltimore. In conjunction with the prices of food commodities, etc., there are presented the yearly earnings of 10 representative families with budgets of expenditures; also for 537 persons engaged in 31 different occupations in 1906, hours worked and earnings per day, days worked

during the year, and average yearly earnings. For persons engaged in a part of the occupations the average yearly earnings for 1906 are placed in comparison with those for 1905 and 1904.

In Labor Circles.—Under this caption is presented the returns received from 62 labor organizations, having a reported membership of 10,073. A list of the unions reporting is given, with name of each organization, name and address of secretary, membership, hours of labor per day, and daily rate of wages. Of the total unions, 14 reported the hours of labor as 8 per day, 8 as 9 per day, and 3 as 10 per day, the remaining unions not reporting as to hours. Less than $3 per day per member were the earnings reported by 40 unions and from $3 to $4 per day per member the earnings reported by 20 unions. There is given for 22 unions the number of members reported idle for each month during 1906.

Immigration.—For the year ending December 31, 1906, 65,284 aliens, exclusive of transits, were admitted at the port of Baltimore. Of this number only 5,712 were destined to Maryland.

MICHIGAN.

Twenty-fourth Annual Report of the Bureau of Labor and Industrial Statistics, including the Fourteenth Annual Report of State Inspection of Factories. 1907. Malcolm J. McLeod, Commissioner. xv, 535 pp.

This report contains 20 chapters, of which Chapters I to X, 336 pages, are devoted to inspection of factories, stores, hotels, tenement shops, etc. Labor and industrial statistics are presented in Chapters XI to XX under the following titles: Organized labor, and labor disturbances in 1906, 48 pages; free employment bureaus, 13 pages; statistics of industry, labor, and wages, 18 pages; prison and reformatory statistics, 17 pages; manufacture of beet sugar, 32 pages; Portland cement and brick industries, 20 pages; tanning industry and manufacture of wire fence, 6 pages; power used in manufacturing in Michigan, 9 pages; statistics of important industries, 17 pages; coal industry, 18 pages.

Organized Labor and Labor Disturbances in 1906.—This canvass made of organized labor in Michigan covers the period from July 1, 1905, to July 1, 1906. A summary of the returns shows 539 local organizations canvassed, which are believed to embrace fully 95 per cent of the local labor unions in the State. These 539 locals canvassed represent 91 distinct occupations in 63 trades. The number of members on July 1, 1905, was 35,369, and on July 1, 1906, the number was 39,787. Members worked an average of 9.2 hours per day and an average of 10.6 months per year. In 1905 average daily wages of members were $2.59 and in 1906 they were $2.63. There

were 146 unions which reported that organization had shortened the work day, 476 unions which reported that differences had been settled by arbitration, and 323 unions which reported that they had an agreement with employers. During the year covered 48 unions were involved in strikes, 24 of which were successful. Strike benefits were paid to the amount of $48,817.85. There were 188 unions which paid an average weekly sick benefit of $5.21, the aggregate paid by all locals in sick benefits during the year being $22,390. There were 375 unions which paid an average death benefit of $227.39, the aggregate paid by all locals in death benefits during the year being $89,526.

The second part of this chapter, devoted to labor disturbances for the year ending December 31, 1906, consists of the report of the work of the State court of mediation and conciliation. A brief account is given of the 13 labor disputes investigated by the court. The work of the court was entirely that of mediation or conciliation, no case of arbitration or public investigation of disputes having occurred.

FREE EMPLOYMENT BUREAUS.—Under this title is presented a detailed report of the work done in the two bureaus of the State—one opened at Detroit on June 12, 1905, and the other at Grand Rapids on July 1, 1905. The table following summarizes the work done at the Detroit bureau from the date of opening to November 30, 1906, and the work done at the Grand Rapids bureau from the date of opening to December 31, 1906:

OPERATION OF FREE PUBLIC EMPLOYMENT OFFICES.

City.	Situations wanted.		Help wanted.		Positions secured.	
	Males.	Females.	Males.	Females.	Males.	Females.
Detroit	11,254	1,731	13,240	2,680	11,081	1,710
Grand Rapids	3,301	1,679	3,028	1,882	2,289	1,340
Total	14,555	3,410	16,268	4,562	13,370	3,050

STATISTICS OF INDUSTRY, LABOR, AND WAGES.—This presentation shows for 7,170 manufacturing establishments canvassed in 1905 and for 7,770 canvassed in 1906 the number, wages, and hours of labor of all wage and salaried employees, together with the average number of days worked per month and months worked per year. The aggregate amount of wages paid all employees in 1905 was $122,953,324, in 1906 it was $138,393,607; the average hours worked per day were 9.9 in 1905 and 9.7 in 1906; the average days worked per month were 26.4 in 1905 and 25.6 in 1906; the average months worked per year were 11.1 in 1905 and 11.8 in 1906.

The facts collected have been compiled and presented in detailed form, showing the various items by counties. From a summary of the investigation the following table is given, which shows the number of employees of each class and the average daily wages paid in 1905 and 1906 in the establishments canvassed:

EMPLOYEES OF EACH CLASS AND AVERAGE DAILY WAGES IN MANUFACTURING ESTABLISHMENTS, 1905 AND 1906.

[Figures are for 7,170 establishments in 1905 and for 7,770 in 1906.]

Class of employees.	1905.		1906.	
	Number of employees.	Average daily wages.	Number of employees.	Average daily wages.
Superintendents	6,266	$4.44	7,039	$4.63
Foremen	7,185	3.02	7,935	3.05
Office clerks:				
Males	6,227	2.74	6,908	2.81
Females	3,902	1.43	4,791	1.48
General factory workers:				
Males	169,804	1.91	188,211	1.93
Females	33,724	1.01	36,974	1.03
Children between 14 and 16 years of age:				
Males	3,414	.77	3,964	.87
Females	1,681	.64	1,877	.67
Total	232,203	1.82	257,699	1.88

Further, the chapter gives statistics of 1905, showing the extent of the manufacturing industry in the United States by presenting for each State the number of establishments, capital invested, wages paid annually, expenses, cost of materials, and value of manufactured products.

Prison and Reformatory Statistics.—Under this title appear the reports of the wardens and superintendents of these institutions. Tables are given showing the number of officials and salary of each, number of inmates, cost of clothing and feeding of inmates, number of inmates employed at contract labor, rate per day of contract labor and hours of labor, and number of inmates employed in systems of labor other than contract.

Manufacture of Beet Sugar.—In the beet sugar industries 16 factories were in operation during the year 1906, the same number as in 1905. These 16 factories represented a total cost of $10,900,000. The acreage devoted to beet raising in 1906 was 94,660, an increase over 1905 of 20,587 acres. The tons of beets grown in 1906 were estimated at 753,058 and the pounds of sugar made at 178,000,000. There were 553 skilled laborers and 3,401 other laborers employed in the factories, with an average daily wage of $3.09 for the former and of $1.95 for the latter.

Portland Cement and Brick Industries.—In the cement industry 15 of the 17 plants in the State were in operation at the time of the investigation. The aggregate cost of the plants in operation was $8,300,000, and their aggregate daily capacity 19,200 barrels. The estimated output for 1906 was 4,032,418 barrels. There were on the pay rolls 446 skilled laborers, at an average daily wage of $2.82, and 1,641 other laborers, at an average daily wage of $2.41. The average daily wages of all employees were $2.49. The annual pay roll amounted to $1,397,600.

There were 80 brickyards canvassed, located in 36 counties, representing an invested capital of $1,742,231. The number of bricks made in 1906 was estimated at 292,390,000, with an average value per 1,000 at the yards of $5.17. Employment was given to 67 superintendents at an average daily wage of $3.05, to 46 foremen at an average daily wage of $2.75, to 162 skilled laborers at an average daily wage of $2.57, to 1,868 common laborers at an average daily wage of $1.80, and to 37 children (under 16 years of age) at an average daily wage of 84 cents.

TANNING INDUSTRY AND MANUFACTURE OF WIRE FENCE.—In the tanning industry 26 plants were canvassed, located in 17 counties, representing an invested capital of $6,557,347. The approximate value of tanned product for the 26 tanneries in 1905 was $14,511,014. The tanneries furnished employment to 27 superintendents at an average daily wage of $5.86, to 54 foremen at an average daily wage of $2.84, to 602 skilled laborers at an average daily wage of $2.07, to 1,211 common laborers at an average daily wage of $1.69, and to 100 female laborers at an average daily wage of $1.07. The wages paid during the year aggregated $1,186,848.

In 1906 there were 9 plants in the State engaged in the manufacture of wire fence, whose invested capital aggregated $1,805,000. The output of the 9 plants for the year was 77,400 tons of fence, valued at $4,370,778, the production of which gave employment to 9 superintendents at an average daily wage of $4.38, to 29 foremen at an average daily wage of $2.82, to 231 skilled laborers at an average daily wage of $2.11, to 269 other laborers at an average daily wage of $1.77, and to 2 children (under 16 years of age) at an average daily wage of 62 cents. The amount of the annual pay roll aggregated $635,273.

POWER USED IN MANUFACTURING IN MICHIGAN.—Of the 7,770 manufacturing establishments embraced in this presentation 3,227 used steam power, 1,069 used electric power, 949 used gas or gasoline power, 219 used water power, 412 used rented power (kind not reported), and 1,894 establishments required no power to operate. The total power generated in the 5,876 power-using establishments was 831,736 horsepower. Also, statistics are given of steam boilers and their equipment and kind of alarms in use and their condition. The data in detail are presented by counties.

STATISTICS OF IMPORTANT INDUSTRIES.—Under this head various industrial firms are mentioned, with descriptions of the establishments, number of persons employed, capital and product, aggregate pay roll, etc. In noticing some of the establishments considerable attention has been given to recently inaugurated industrial betterments.

COAL INDUSTRY.—In this industry there were 38 coal mines in operation during the year 1906, as compared with 33 mines during the year 1905. A condensed summary of the operations of the mines for the two years is presented in the table following:

COAL MINE STATISTICS, 1905 AND 1906.

Items.	Year.	
	1905.	1906.
Mines in operation	33	38
Average number of employees	2,732	2,119
Average hours worked per day	7.7	7.8
Average days worked per month	18.0	22.3
Average daily wages	$2.97	$2.40
Tons of coal mined	1,380,307	1,372,854
Average cost of mining per ton	$1.59	$1.50

In 16 mines 33 accidents were reported. Of these 6 were fatal, 8 serious, 11 severe, and 8 slight.

OHIO.

Thirtieth Annual Report of the Bureau of Labor Statistics of the State of Ohio, for the year 1906. M. D. Ratchford, Commissioner. 671 pp.

This report consists of six parts in which are presented the following subjects: Laws governing the bureau, recent labor laws, and court decisions, 22 pages; manufactures, 350 pages; coal mining, 221 pages; prison labor, 4 pages; sweat shops, 21 pages; free public employment offices, 18 pages; chronology of labor bureaus, 3 pages.

MANUFACTURES.—Tables are given for 1905, showing, by industries for each of the five principal cities, the remaining cities and villages, and totals for the State, the number of establishments reported, capital invested, value of goods manufactured, amount paid for rent, taxes, and insurance, total amount paid in wages, number and monthly pay of salaried employees, number of male and of female wage-earners, number employed by occupations, and average number of days worked, average daily wages, average yearly earnings, and average hours of daily labor. Other tables show, by industries, the number in each occupation affected by a change of wages during the year.

The 8,514 establishments from which returns were received for 1905 reported an invested capital of $449,702,188, and goods produced or manufactured to the value of $873,698,493.60. Wages paid 306,155 males and 57,683 females, or a total of 363,838 wage-earners, aggregated $189,977,399.23, and salaries aggregating $38,508,446.16 were paid to 35,467 employed as office help, etc. During the year 56,106 persons received an average increase in wages of 7.5 per cent,

and 2,600 persons suffered an average reduction in wages of 7.2 per cent.

The number of establishments reporting in 1905 was 753 more than in 1904, the value of manufactured products was $153,035,850.85 more than that of 1904, and the amount paid in wages during the year was increased by $25,660,464.33. The aggregate invested capital exceeded that reported for 1904 by $43,869,561, and the salaries paid superintendents, office help, etc., showed an increase of $3,329,046.96.

COAL MINING.—Tables are given, by counties, showing number of mines reporting, average number of employees, capital invested, value of production, wages and salaries paid, average daily wages, average yearly earnings, average days worked, average hours of daily labor, etc. The following comparative table presents a summary of mining statistics for the years 1904 and 1905:

STATISTICS OF COAL MINING, 1904 AND 1905.

Items.	1904.	1905.	Increase +, decrease −.
Number of mines reporting	596	587	−9
Average number of employees (monthly)	37,004	37,673	+669
Average number of salaried employees (monthly)	1,014	970	−44
Invested capital	$36,661,245.00	$36,630,252.00	−$30,993.00
Value of production	$24,703,137.47	$24,986,266.90	+$283,129.43
Amount paid for rent, taxes, and insurance	$778,159.40	$610,508.94	−$167,650.46
Amount paid in wages	$18,718,249.43	$18,872,894.72	+$154,645.29
Amount paid in salaries	$984,220.56	$973,388.40	−$10,832.16
Average days worked per employee	173	173	
Average daily wages per employee	$2.46	$2.48	+$0.02
Average yearly earnings per employee	$425.58	$429.04	+$3.46
Average hours of daily work	8	8	
Number affected by advance in wages	64	164	+100
Number affected by reduction in wages	29,343	2	−29,341
Average per cent advance in wages	9.4	8.9	−.5
Average per cent reduction in wages	5.6	13.2	+7.6

PRISON LABOR.—This is a brief inquiry relating to the manufacture of shovels, spades, and scoops by convict labor in the Ohio Penitentiary and to the manufacture of the same articles by six establishments employing free labor, arising from the complaint that, in the industry named, prisoners beyond the number allowed by law were being employed.

SWEAT SHOPS.—This inquiry, confined to the cities of Cleveland and Cincinnati, embraces the tenement-shop manufacture of clothing and that of cigars, stogies, and cigarettes.

In the city of Cleveland, in the clothing industry, 91 shops were canvassed, employing 1,076 wage-earners, 314 males and 762 females. The hours of labor per week averaged 56.3, and the average earnings per week were $12.45 for adult males and $6.93 for adult females. In the manufacture of cigars, stogies, and cigarettes 63 shops were canvassed, employing 174 wage-earners, 134 males and 40 females. The hours of labor per week averaged 49.8 for males and 48.3 for females. The average earnings per week were $10.71 for adult males and $5.93 for adult females.

In the city of Cincinnati, in the clothing industry, 112 shops were canvassed, employing 1,194 wage-earners, 326 males and 868 females. The hours of labor per week averaged 54.6 for males and 54.5 for females. The average earnings per week were $11.73 for adult males and $5.99 for adult females. In the manufacture of cigars, stogies, and cigarettes 74 shops were canvassed, employing 327 wage-earners, 208 males and 119 females. The hours of labor per week averaged 50.7 for males and 53.7 for females. The average weekly earnings were $10.26 for adult males and $6.76 for adult females.

FREE PUBLIC EMPLOYMENT OFFICES.—In addition to an itemized statement of the expenses of each office for the year ending October 31, 1906, and text reports from each of the five offices, tables are given showing by years the results of the operations of each office from date of organization, and for each week of the year ending October 25, 1906.

The following table shows the operations of the five free public employment offices of the State for the year ending October 25, 1906:

OPERATIONS OF FREE PUBLIC EMPLOYMENT OFFICES, YEAR ENDING OCTOBER 25, 1906.

City.	Situations wanted.		Help wanted.		Positions secured.	
	Males.	Females.	Males.	Females.	Males.	Females.
Cleveland	3,330	2,624	7,099	3,550	3,171	2,476
Columbus	2,542	2,721	3,451	3,882	2,087	2,213
Cincinnati	4,599	2,328	4,333	2,565	4,209	2,025
Dayton	3,870	2,161	5,059	5,047	3,554	2,090
Toledo	1,796	1,029	2,006	1,336	1,353	827
Total	16,137	10,863	21,948	16,380	14,374	9,631

Since the organization in 1890 of the five free public employment offices there has been a total of 432,773 applications for situations wanted, 390,954 applications for help wanted, and 263,753 positions secured. Of applications for situations 60.9 per cent were filled, and of applications for help 67.5 were filled.

The expenses of the five offices for the year ending October 31, 1906 (excluding salaries), were $2,236.81, of which the expenses of the Cleveland office were $408.26, the Columbus office $446.17, the Cincinnati office $470.65, the Dayton office $462.78, and the Toledo office $448.95.

RECENT FOREIGN STATISTICAL PUBLICATIONS.

AUSTRIA.

Die Verhältnisse in der Kleider- und Wäschekonfektion. Herausgegeben vom K. K. Arbeitsstatistischen Amte im Handelsministerium. 1906. 102 pp.

This report is based upon the results of an investigation made by the Austrian bureau of labor statistics in 1899 in regard to conditions of production and labor in the clothing and garment industry, this being the first of a series of investigations made with special reference to home work. The work of investigation was in the hands of a special committee composed of representatives of the bureau of labor statistics, the ministry of commerce, the ministry of the interior, the ministry of justice, the superior sanitary commission, the labor inspection bureau, the manufacturers, the master workmen, and the wage-workers.

One hundred persons representing the several branches of the industry and the various industrial centers were examined by the special committee, the interrogatories being based upon special detailed schedules. The principal questions related to conditions of production and sale and to the economic and social conditions of the different classes of manufacturers, middlemen, and work people involved. The inquiries laid much stress on the subject of home work, with a view to its regulation or abolition. The report is divided into three parts, discussing respectively the manufacture of men's clothing and uniforms, of women's clothing, and of white goods and cravats.

The inquiry into the first branch of the subject disclosed a localization of certain kinds of manufacturing, as well as the specification in the cases of individual workmen. The manufacturers in some instances cut the cloth, sometimes by the aid of marking and cutting machines driven by steam; others give out the cloth in the piece, cutting being attended to by the contractor. The contractors were in part skilled workmen while others were mere business managers, taking no part in the actual work of manufacture.

One of the larger manufacturing firms, making all sorts of men's and children's garments, employed from 40 to 60 cutters, and used two cutting machines driven by steam. It had 160 contractors or middlemen in the immediate district, and no fewer than 360 in surrounding villages, besides 90 workers on cotton goods alone and 240

girls employed on children's clothing. It is estimated that the entire working force employed through these various contractors, etc., increased the total number of employees by approximately 850 persons, showing an average of fewer than 2 employees per contractor. Other firms reported contractors as having 2 or 3 workers, a few as many as 7 or 8, so that the proportion of woman and child labor would appear not to be large. Indeed a considerable aversion to the home work system was expressed by some contractors and workmen, while on the other hand, the manufacturers generally expressed their preference for the continuance of the present system and against its abolishment or restriction by legal enactment.

Employment appears to be more stable in recent years than formerly, work never being suspended entirely, even during the so-called dull season which usually occurs in April or May, the number of employees laid off during this period being comparatively small.

The data relating to wages show a considerable diversity of rates, generally depending upon locality, character of work, and skill of the workman. Cases are cited of a shop worker in Vienna whose maximum weekly earnings amounted to 13 crowns ($2.64) with board and lodging; and of a home worker in the same city, working on uniforms, occasionally assisted by his wife, whose average earnings were 18 crowns ($3.65) per week working 14 hours a day, which, during busy seasons were sometimes extended to 18 hours with an increase in earnings to a maximum of 24 crowns ($4.87) per week. The earnings of a home worker in another locality, assisted by his wife and frequently working from 17 to 18 hours a day, seldom exceeded 11 crowns ($2.23) a week. Other instances are given of 8 crowns ($1.62) as the maximum of the weekly earnings of pieceworkers, and 6 crowns ($1.22) and board and lodging of time workers. The best wages, as a rule, are said to be paid to those who are employed on articles intended for export.

The hours of labor vary, 12 being an average number reported for shop workers, working from 6 a. m. to 8 p. m. with three intervals for meals aggregating two hours. Other cases report commencing work at 5 a. m. and 5.45 a. m., continuing until broken off by nightfall.

The sanitary conditions surrounding the shop workers and homeworkers are described as generally very unsatisfactory. In a majority of cases the rooms were small, overcrowded, and poorly ventilated. Frequently the working rooms were also used as living rooms, bedrooms, or kitchens, or for all these purposes combined.

Attempts at organization among working people in this industry have so far produced rather indifferent results. Aside from a few sick-benefit associations, mention is made of a tailor's union in Prossnitz with a membership of 150 persons whose object is stated to be

the improvement of the material welfare of its members; of another union in the same locality which, among other functions, seeks to find employment for the unemployed, and of one in Lemberg which was reported to be in a flourishing condition; but the data relating to this subject are too meager to throw any light upon the operations of the unions.

The inquiry into the other two branches of this industry disclosed, in general, the same features and conditions as presented above; instances, however, are cited which indicate somewhat more favorable conditions as to wages and hours of labor than those prevailing in the manufacture of men's clothing.

BULGARIA.

Statistique des Prix Moyens des Animaux Domestiques, des Principaux Articles Alimentaires et des Salaires des Ouvriers en Bulgarie pendant la période décennale 1893–1902. Principauté de Bulgarie.—Direction de la Statistique. 1906. xvii, 121 pp.

The Bulgarian statistical office has published under the above title a comparative statement of prices of domestic animals and principal articles of food, also of wages paid in several selected occupations in the principality, during the ten-year period 1893–1902. The collection of data relating to prices and wages in north Bulgaria was begun in April, 1881, and in south Bulgaria in January, 1886, the information being printed in the form of monthly averages for the first time in 1886. After this the publication of the material was discontinued until 1892, in which year were published statements of prices for each month, together with corresponding averages for the entire year.

The data used in the preparation of the present report were gathered and transmitted to the statistical office at Sophia by the local authorities in each of the 62 leading centers of population of the country, the price quotations being obtained in the markets themselves on customary market days. To insure fairness in the figures presented, only articles of a medium grade or quality were considered, those of a high or low standard being excluded from the tabulation. From the information collected each week were made computations showing the average monthly and yearly market price of the various kinds of commodities exposed for sale, the facts for each locality being reported separately. In establishing a common basis of comparison between the prices prevailing in different years of the period 1893 to 1902, the plan was adopted of selecting as a base or standard the average price of an article for the five-year period, 1888 to 1892. To this was assigned a value of 100, the relative increase or decrease in the price of the article for each of the succeeding ten years being shown by a series of index numbers.

Five separate tables of such index numbers are contained in the report, one for the principality as a whole and one for each of the cities of Sophia, Plovdiv, Roussé, and Varna. The table relating to the country at large embraces 99 separate articles of food or other merchandise, those for the cities of Sophia, Plovdiv, and Varna 81 articles, and the one for the city of Roussé 80 articles. From each of these detailed tables has been constructed a general table which shows for all classes of commodities combined the relative increase or decrease in price during each year from 1893 to 1902. In addition to these a table is included which shows in the same manner as the others the relative prices of fodder and live stock in the principality during the period specified. Data relating to wages in four common branches of manual employment are also given.

The following table shows the relative prices of 99 leading articles of merchandise combined, and of fodder and live stock; also the relative wages paid day laborers, mowers, plowmen, and masons in Bulgaria for each year of the period 1893 to 1902. Under the term fodder are included barley and oat straw only, while under live stock are considered oxen, cows, buffaloes, horses, sheep, and goats. The figures showing relative wages are based on the average wage received by each class of employees for the five-year period 1888 to 1892, and the data shown for one class have no relation to those for other classes.

RELATIVE PRICES AND WAGES IN BULGARIA, 1893 TO 1902.

[Average for 1888 to 1892=100.0.]

Year.	Prices.			Wages.				
	Commodities (99 articles combined).	Fodder (barley and oat straw).	Live stock.	Day laborers.	Mowers.	Plowmen.	Masons.	Simple average for four occupations.
1893	109.93	93.87	113.36	109.09	111.29	106.37	114.39	110.29
1894	107.39	86.85	107.98	108.52	107.66	102.77	112.50	107.86
1895	107.17	95.88	104.22	101.14	106.45	103.32	107.95	104.72
1896	104.02	90.08	102.18	96.59	104.84	99.17	105.30	101.48
1897	106.87	100.33	102.67	114.77	103.63	98.61	104.17	105.30
1898	106.49	111.59	103.23	96.59	95.97	96.95	105.68	98.80
1899	103.03	113.49	89.16	84.66	81.85	90.30	88.26	86.27
1900	100.79	111.37	88.36	82.39	84.68	89.47	86.36	85.73
1901	100.77	102.79	93.26	81.25	83.87	89.47	84.47	84.77
1902	104.36	107.80	98.79	82.95	85.08	88.92	82.58	84.88

From the above table it is seen that the cost of living in Bulgaria during the ten-year period was greatest in 1893 and lowest in 1901. The same years witnessed, respectively, for four occupations combined, the highest and lowest averages in wages. An examination of the figures relating to fodder and live stock shows that the price of domestic animals was greatest during the years when forage was cheapest and lowest in the years when the cost of feed was greatest.

FRANCE.

Rapports sur l'Application des Lois Réglementant le Travail en 1905. Direction du Travail, Ministère du Travail et de la Prévoyance Sociale. 1906. cxcii, 476 pp.

In this volume are found the summary reports of the members of the superior commission of labor and of the minister of labor and social providence, and the more detailed reports of the division inspectors of labor on the subject of the enforcement of certain laws of France affecting industrial conditions. These laws are three in number: The law of September 9, 1848, relates to the hours of labor of male adults only; that of June 12, 1893, amended by a law of July 11, 1903, is a general factory-inspection law, applying to all establishments considered in this report, and contains provisions for lighting, ventilation, and safety of employees in publicly owned workshops, as well as in those under private control; the act of March 30, 1900, which is in reality an amendment or revision of the law of November 2, 1892, has for its subject-matter the regulation of the employment of women and children in industrial establishments. This last law also controls the hours of labor of adult males at work in establishments where women and children are employed.

Mines and quarries are not considered in this report, being under the mine inspection service, while factories connected with the production of army and navy supplies are under special regulations. The number of establishments coming within the purview of the present report is 511,783, a net increase of 2,934 as compared with the year 1904. Of these 255,457 employed females or a mixed working force, and 256,326 employed adult males only.

A tendency noted in previous years, namely, a diminution of the number of establishments employing a mixed working force, and a corresponding increase of the number employing adult males only, is observable in this report. This is explained by the fact that the elimination of women and children from the working force takes an establishment out from under the limitations of the laws of November 2, 1892, and March 30, 1900, which make 10 hours the limit of a day's work where women or children are employed, and allows the full 12-hour day of the law of 1848. Thus in the six-year period, 1900 to 1905, the number of establishments coming within the provisions of these laws decreased from 164,786 in the earlier year to 158,438 in the later, a decrease of 6,348. On the other hand, the same period shows an increase of 6,941—from 29,622 to 36,563—in the class of establishments coming under the law of 1848. The report ventures the prediction that unless something occurs to change the present trend, there will be a practical segregation of the working places for adult males and those in which women and children are employed,

except where labor is intimately interdependent. Two dangers are seen in this tendency—one the deprivation of industry of its sources of recruiting its labor supply; the other, the injury to the children in being thrown out of employment. The threat of employers to discharge children under 18 if the law limiting hours of labor is enforced is frequently made to inspectors.

Of the total number of establishments considered, 415,323, or 81.1 per cent, had from 1 to 5 employees; 70,427, or 13.8 per cent, had from 6 to 20; 21,331, or 4.2 per cent, had from 21 to 100; 4,235, or 0.8 per cent, had from 101 to 500; and 467, or 0.1 per cent, had more than 500 employees.

The total number of employees was 3,726,578, of whom 300,988 were males under 18 years of age, and 264,650 were females under 18; 797,483 were adult females, and 2,363,457, or 63.4 per cent of the entire number, were adult males. The percentage of females of all ages was 28.5.

Opinions are divided on the subject of the increase or decrease of the number of home workshops. If these employ only members of the family, under the control of a parent or guardian, and use only hand or foot power, they are not subject to inspection unless the manufacture is of a class designated as dangerous by the law. Actual statistics are impossible with the present inspection force, and the inspectors make divergent reports as to their movement. The desire to escape supervision and to procure very cheap labor leads some manufacturers to favor the giving out of work. Opposed to this tendency is a desire for uniformity of product and the regularity in output and the cheapness of machine production. Though unable to decide which of these tendencies actually prevailed at the time of the report, the labor commission renewed its recommendation of such changes in the inspection law as would provide for more extended protection of woman and child labor by means of an inspection of home industries similar to that exercised over industrial establishments.

The industrial employment of children under 13 years of age is prohibited, except that children who have attained the age of 12 years and have a proper medical certificate may be employed, on showing that they have completed a prescribed course of primary studies.

As already indicated, the hours of labor of adult males are fixed at a maximum of 12 per day by the law of 1848, while by the law of 1900 they may not exceed 10 hours for women or for persons under 18 years of age. The limitation to 10 hours also applies to males working in establishments with females and minors under 18. The number of establishments affected by each law is given above. Special

and temporary exceptions are allowed on proper request and showing of cause to the authorities. The report considers the question of the effect of the reduction of hours from 11 to 10 per day by the operation of the law of 1900. It was the prevalent opinion of the inspectors that the production had not been affected, either because a voluntary ten-hour day had been adopted prior to the time when the law came into operation, or because by a better organization of the establishment they were able to produce as much in 10 hours as had previously been produced in 11. In some of the smaller establishments, however, and particularly where the output is accurately measured by the speed of operation of a limited number of machines, a decrease was reported.

Reports of industrial accidents are required by law to be made in the first instance to the mayors of the communes, who in turn report to the inspectors. Accidents are of three classes—those causing death, those causing permanent disability, and those causing temporary disability. Accidents causing disability of not more than four days are not reported.

The following table shows the number and rate per thousand of accidents occurring in each industrial group, according to their gravity. Mines and quarries are not included, since under the French law a different inspection force has charge thereof.

NUMBER OF ACCIDENTS OCCURRING AND RATE PER THOUSAND EMPLOYEES, BY GROUPS OF INDUSTRIES, ACCORDING TO RESULTS, 1905.

Industry.	Cases of injury per 1,000 employees.	Deaths.		Disabilities.				Results unknown.	
				Permanent.		Temporary (exceeding four days).			
		Number.	Rate per 1,000.	Number.	Rate per 1,000.	Number.	Rate per 1,000.	Number.	Rate per 1,000.
Food products	47.3	66	0.2	222	0.7	14,819	45.9	169	0.5
Chemical industries	122.4	57	.5	126	1.2	12,670	118.8	186	1.7
Caoutchouc, paper, and pasteboard	59.7	17	.2	107	1.4	4,302	57.4	65	.9
Printing and publishing	29.5	6	.1	67	.8	2,365	28.5	17	.2
Textiles	25.9	28	.1	493	.8	15,802	24.9	215	.3
Clothing	5.8	6	(a)	37	.1	2,129	5.6	24	.1
Straw, feather, and hair goods	11.2	------	------	3	.2	172	10.7	2	.1
Hides and leather	24.4	6	.4	91	.7	3,548	27.8	52	.4
Woodworking	63.6	88	.3	708	2.5	16,897	59.8	269	.9
Metallurgy	257.4	85	1.0	154	1.8	21,725	256.6	37	.4
Metal working, base	114.5	102	.2	910	1.9	53,265	111.4	519	1.1
Metal working, precious	18.3	------	------	10	.5	354	17.7	3	.2
Lapidary work	15.5	------	------	------	------	30	15.0	------	------
Stone cutting and polishing	53.4	6	.3	18	.9	1,030	51.5	30	1.5
Earth work and masonry	123.7	342	1.3	585	2.1	32,284	118.2	539	1.9
Earthen and stone ware	64.6	36	.2	142	.9	9,655	62.7	106	.7
Commerce and banking	34.1	106	.2	188	.4	16,651	37.3	273	.6
Fisheries (establishments having an industrial character)	(b)	1	(b)	------	(b)	117	(b)	------	------
Agriculture and forestry (establishments having an industrial character)	(b)	83	(b)	161	(b)	2,525	(b)	111	(b)
Extractive industries (excluding mine and quarry labor)	(b)	3	(b)	5	(b)	291	(b)	4	(b)
Transportation	(b)	403	(b)	506	(b)	37,094	(b)	489	(b)
Liberal professions	(b)	1	(b)	2	(b)	132	(b)	3	(b)
Personal and domestic service	(b)	5	(b)	1	(b)	141	(b)	4	(b)
Public service	(b)	23	(b)	53	(b)	2,651	(b)	57	(b)

[a] Less than five one-hundredths of one per thousand. [b] Not reported.

The following table shows the number of accidents and the rate per thousand reported in some of the industries, grouped by age and sex:

NUMBER OF ACCIDENTS OCCURRING AND RATE PER THOUSAND EMPLOYEES, IN GROUPS OF INDUSTRIES, BY AGE AND SEX, 1905.

Industry.	Employees under 18 years of age.					
	Males.			Females.		
	Cases of injury.	Employees.	Rate per 1,000.	Cases of injury.	Employees.	Rate per 1,000.
Food products	750	21,191	35	170	11,246	15
Chemical industries	319	3,281	97	120	2,452	49
Caoutchouc, paper, and pasteboard	459	5,311	86	142	8,024	18
Printing and publishing	702	13,598	52	66	5,068	13
Textiles	1,946	43,010	45	1,198	80,254	15
Clothing	125	7,542	17	167	107,291	2
Straw, feather, and hair goods	21	913	23	16	2,181	7
Hides and leather	390	12,218	32	83	6,530	13
Woodworking	1,270	30,666	41	101	4,748	21
Metallurgy	2,406	6,969	345	5	77	65
Metal working, base	7,108	59,006	120	345	7,131	48
Metal working, precious	57	2,625	22	12	1,576	8
Lapidary work	3	163	18	7	174	40
Stone cutting and polishing	31	1,322	23	----------	231	----------
Earth work and masonry	1,026	15,824	65	----------	145	----------
Earthen and stone ware	1,507	21,825	69	189	5,816	32
Commerce and banking	675	38,161	18	57	18,393	3

Industry.	Employees 18 years of age or over.					
	Males.			Females.		
	Cases of injury.	Employees.	Rate per 1,000.	Cases of injury.	Employees.	Rate per 1,000.
Food products	13,496	234,898	57	860	55,627	15
Chemical industries	11,860	80,176	148	740	20,583	36
Caoutchouc, paper, and pasteboard	3,488	37,513	93	402	24,342	17
Printing and publishing	1,561	48,312	32	126	16,258	8
Textiles	10,498	255,718	41	2,895	257,432	11
Clothing	1,404	51,139	27	501	211,568	2
Straw, feather, and hair goods	84	5,343	16	56	7,357	8
Hides and leather	2,963	85,474	35	261	23,001	11
Woodworking	16,299	229,375	71	290	17,550	17
Metallurgy	19,564	77,751	252	26	653	40
Metal working, base	46,390	387,662	120	953	24,581	39
Metal working, precious	275	11,387	24	23	4,475	5
Lapidary work	16	1,090	15	4	508	8
Stone cutting and polishing	1,051	17,735	59	2	1,009	2
Earth work and masonry	32,712	256,547	128	12	293	41
Earthen and stone ware	7,934	110,134	72	310	16,044	19
Commerce and banking	16,031	300,888	53	455	88,206	5

The next table shows the total number of employees by sex and age groups, and the distribution of accidents among these groups according to results, for the year 1905:

TOTAL NUMBER OF EMPLOYEES IN INDUSTRIES REPORTING AND RESULTS OF ACCIDENTS, BY SEX AND AGE GROUPS, 1905.

Items.	Employees under 18 years of age.		Employees 18 years of age or over.		Total.
	Males.	Females.	Males.	Females.	
Number of employees	283,615	261,337	2,191,142	769,487	3,505,581
Per cent [a]	8.09	7.46	62.50	21.95	100.00
Number of deaths	56	8	1,390	16	1,470
Per cent [a]	3.81	.54	94.56	1.09	100.00
Number of permanent disabilities	324	77	3,993	195	4,589
Per cent [a]	7.06	1.68	87.01	4.25	100.00
Number of temporary disabilities (above 4 days)	18,622	2,595	221,387	8,045	250,649
Per cent [a]	7.43	1.03	88.33	3.21	100.00
Results unknown	182	36	2,849	107	3,174
Per cent [a]	5.73	1.14	89.76	3.37	100.00
Total cases of injury	19,184	2,716	229,619	8,363	259,882
Per cent [a]	7.38	1.04	88.36	3.22	100.00

[a] Computed.

A striking excess in the proportion of accidents to employees in the case of adult males over those occurring to other classes of employees is apparent from the above table.

From the mine inspectors' reports it appears that there were 330,796 persons employed in mines and quarries in 1905. The number of accidents was 33,742, of which 348 were fatal, 422 resulted in permanent disability, 32,331 in temporary disability (exceeding 4 days), while in 641 cases the results were unknown.

Les Associations Professionnelles Ouvrières. Office du Travail, Ministère du Commerce, de l'Industrie, des Postes et des Télégraphes. Tome II, 1901, 895 pp. Tome III, 1903, 679 pp. Tome IV, 1904, 821 pp.

These volumes are a continuation of a series of reports on trade and agricultural associations by the French bureau of labor. The first volume was issued in 1899, a digest of which appeared in Bulletin No. 31 (pages 1272–1274). As there indicated, the report consists of three parts, the first of which is devoted to a review of legislation on the subject considered, while the last (not yet issued) will present a historical account of the various local and national federations of unions of different trades and of labor exchanges. The three volumes named above, and the latter part of the first volume, are taken up with the second division of the subject, which consists of an account of the development of the various trade organizations in the principal cities of France which have become, under the law of 1884, the regularly incorporated local or national trade bodies.

In the first volume five groups of industries are discussed: (1) Agriculture, forestry, and fisheries; (2) the extractive industries, mining and quarrying; (3) food products; (4) chemical industries, including the manufacture of tobacco; (5) printing trades. In volume two are discussed: (6) Hides and leather; (7) textiles and clothing; (8) furniture and woodworking. In volume three are presented: (9) Metal working; (10) stoneworking, and earthen and glass ware. The fourth volume discusses: (11) The building trades; (12) transportation; (13) various industries.

The discussion of the organizations found in these various industrial groups is quite detailed, and includes statistical data, an account of the origin of the different classes of unions or societies, the provisions of their constitutions and by-laws, accounts of strikes, methods of relief, benefit funds, trade congresses, etc.

A brief concluding chapter is devoted to the subject of women in trade organizations, and a list is given of 155 such bodies composed exclusively of women, the total membership being 13,873. In 73 other organizations, of 21,008 members, 16,603 are females, while 361 other bodies have smaller proportions of female members.

GERMANY.

Jahresberichte der Gewerbe-Aufsichtsbeamten und Bergbehörden für das Jahr 1905. 1906. Band I, xliii, 667 pp.; Band II, xvii, 1235 pp.; Band III, vii, 1004 pp.; Band IV, 1092 pp.

These volumes present a report of the factory and mine inspectors of the German Empire for the year 1905. Each principal and subordinate division of the Empire is treated separately in the first three volumes, the fourth volume presenting summary tables for the whole country and an extensive analytical index. The subject-matter relating to each province or district is uniform throughout, and is treated under the following heads: (1) A brief general view of local conditions, showing the relations of the inspection office to employers and employees, the number of visits of inspection made, etc.; (2) statistics of the working force, under the heads of young persons (under 16 years of age), females, and all employees; (3) the protection of laborers, under the heads, injuries from accidents and sanitary provisions; and (4) economic and moral condition of the working people, provisions for betterment, and miscellaneous observations. The subjects considered include the enforcement of the laws governing the employment of children both as to age limit and hours of work, the hours of labor and rest for women, overtime, Sunday and holiday work, reports of accidents, safety devices, sanitation of factories and homes, wages and hours of labor, etc.

The following table shows for each group of industries the total number of establishments reported for the Empire, the number employing women and young persons, and the number of employees, by sex and age groups, for the year 1905:

ESTABLISHMENTS AND NUMBER OF EMPLOYEES, BY SEX AND AGE GROUPS, 1905.

Industries.	Establishments.			Employees.			
		Number employing.			Children (under 14 years).		
	Total number.	Young persons (under 16 years).	Females (16 years or over).	Total number.	Males.	Females.	Total.
Mining, metallurgical, salt, etc.	4,115	1,596	758	914,968	70	9	79
Quarrying, products of stone, clay, glass, etc.	25,805	7,873	5,720	628,372	968	373	1,341
Metal working	15,466	9,306	3,207	497,101	872	260	1,132
Machinery, instruments, apparatus, etc.	13,985	7,792	1,469	789,573	714	72	786
Chemical products	2,510	715	900	127,246	43	77	120
Oil, fat, soap, gas, etc.	3,512	526	711	66,271	59	20	79
Textiles	14,338	7,836	11,019	827,066	1,109	1,814	2,923
Paper	3,601	2,013	2,576	156,522	202	193	395
Leather, hair, and rubber goods	2,720	816	775	87,474	50	32	82
Woodworking, carved materials, etc.	25,671	8,104	2,499	342,007	605	149	754
Foods and drinks (including tobacco)	62,942	10,254	9,888	551,514	380	539	919
Wearing apparel, cleaning, etc.	38,631	15,514	32,775	326,059	270	816	1,136
Building trades	5,808	2,539	143	125,997	71	1	72
Printing, bookbinding, typefounding, etc.	6,547	4,669	3,333	155,310	348	64	412
Miscellaneous	1,414	182	148	12,177	10	5	15
Total	226,565	79,735	75,921	5,607,657	5,771	4,474	10,245

ESTABLISHMENTS AND NUMBER OF EMPLOYEES ETC.—Concluded.

Industries.	Employees.					
	Young persons (14 or under 16 years).			Total children and young persons.	Females (16 years or over).	Males (16 years or over).
	Males.	Females.	Total.			
Mining, metallurgical, salt, etc	30,481	1,081	31,562	31,641	15,853	367,474
Quarrying, products of stone, clay, glass, etc	29,391	7,358	36,749	38,090	62,676	527,606
Metal working	38,742	9,053	47,795	48,927	55,022	398,152
Machinery, instruments, apparatus, etc	43,974	2,671	46,645	47,431	33,459	708,683
Chemical products	3,395	2,051	5,446	5,566	18,404	103,276
Oil, fat, soap, gas, etc	1,074	978	2,052	2,131	7,131	57,009
Textiles	28,111	45,134	73,245	76,168	386,263	364,635
Paper	6,384	7,954	14,338	14,733	51,082	90,707
Leather, hair, and rubber goods	3,645	1,654	5,299	5,381	13,407	68,686
Woodworking, carved materials, etc	17,880	3,135	21,015	21,769	24,285	295,953
Foods and drinks (including tobacco)	17,728	16,661	34,389	35,308	139,686	376,520
Wearing apparel, cleaning, etc	6,322	33,544	39,866	41,002	197,315	87,742
Building trades	6,695	11	6,706	6,778	591	118,628
Printing, bookbinding, typefounding, etc	12,172	4,114	16,286	16,698	33,814	104,798
Miscellaneous	597	274	871	886	2,638	8,653
Total	246,591	135,673	382,264	392,509	1,041,626	4,173,522

No industry group is reported that does not give employment to employees of every class, though the number of children under 14 years of age is very small in the building trades. Compared with the total number of employees, however, there is a much smaller percentage of children in the mining, etc., industries than in any other. The textile and clothing industries together employ approximately 30 per cent of all children and young persons, while in these two groups are found considerably more than one-half of all females 16 years of age or over.

ITALY.

Statistica Industriale. Riassunto delle Notizie sulle Condizioni Industriali del Regno. Ministero di Agricoltura, Industria e Commercio, Direzione Generale della Statistica. Part I, 243 pp. 1906. Part II, 405 pp. 1905. Part III, 131 pp. 1906.

These three volumes issued by the Italian bureau of statistics of the department of agriculture, industry, and commerce present a statistical and descriptive account of conditions of Italian manufacturing, mining, and related industries. The data presented have been collected by the statistical bureau during the years from 1885 to 1903 and published in the Annali di Statistica and in monographs relating to the separate Provinces or to specific industries. The matter thus presented has been revised and corrected, by the assistance of local and other Government officials and of chambers of commerce, so that the report is assumed to represent with sufficient exactness the conditions of private industries in 1903. For other industries, including mining, public works, and industries subject to Govern-

ment inspection, the data presented are for a later period, in some cases for the year 1904, in others for the year 1905. The report does not include transportation.

The first volume contains statistics of production, imports and exports, mechanical equipment, labor, etc., for different industries in detail, and for different series of years. Maps are appended showing respectively the distribution of industrial labor, exclusive of home workers, and of mechanical motors used in industry.

The second volume contains tables only, showing for each Province by specific industries and by groups the number of establishments, of steam boilers, of motors by power used, total power developed, and number of employees by sex and age groups. Totals for the Kingdom are also shown.

In the third volume the same facts are presented, the industry being made the basis of tabulation, instead of the Province.

Industries are grouped under four principal heads: Mines and minerals, metal working, machinery, and chemical products; food products (including liquors, but not tobacco); textiles; and various industries.

The following table presents by groups of industries the number of establishments, the number of motors and total horsepower, and the number of employees by sex and age groups. For the period represented and for the classification of industries reference should be made to the foregoing text.

ESTABLISHMENTS, MOTIVE POWER, AND NUMBER OF EMPLOYEES, BY GROUPS OF INDUSTRIES.

Groups of industries.	Number of establishments.	Mechanical motors.		Number of employees.				
				Males.		Females.		Total.
		Number.	Horsepower.	Over 15 years.	15 years or under.	Over 15 years.	15 years or under.	
Mines and minerals, metal-working machinery, and chemical products	33,194	8,321	369,358	353,624	33,067	28,461	3,823	418,975
Food products (including liquors, but not tobacco)	62,134	46,265	213,973	192,243	11,161	14,754	2,259	220,417
Textiles	7,259	4,926	137,808	93,082	12,690	280,260	66,889	452,921
Various industries	14,820	4,087	53,521	125,841	22,497	114,286	45,220	307,844
Total	117,407	63,599	774,650	764,790	79,415	437,761	118,191	1,400,157

In the group representing the manufacture of food products is found the greatest number of mechanical motors, both absolutely, and in comparison with the total number of establishments. The average horsepower per motor is small, however, being but 4.6 as against 44.4 per motor in the group of mines, minerals, etc., and 28.0 in the group of textiles.

The groups are not sufficiently well defined to admit of detailed comparisons of data as to employees. The large excess of female

over male employees in the group of textiles may be noted, however, and especially of females of 15 years of age or under, as compared with males of the same age group.

Case Sane, Economiche e Popolari. Comune di Venezia. 23 pp., 16 appendixes. 1906.

This report issued by a commission of the city of Venice on sanitary housing at moderate rentals consists of a general report of 23 pages and 16 appendixes of varying sizes, presenting text, statistical tables, plates, etc. The city is making a moderate growth, the population having increased from 158,305 in 1895 to 167,096 in 1905. Attention was called in 1886 to the necessity of providing the working classes with moderately priced homes, suitably supplied with light and air and protected against the dangers of excessive dampness so easily prevalent in a city built as Venice is. Numerous proposals were submitted, from a consideration of which it was concluded that three general methods were open to the commune for assisting in the movement for sanitary housing: (1) By encouraging private enterprise, granting premiums to offset financial losses occasioned by investments producing smaller returns than usual; (2) by undertaking directly the work of construction and management of the houses; (3) by favoring the formation of special companies for the prosecution of the work under private initiative.

The granting of premiums was agreed upon in 1891, and was to continue for a definite period, and under requirements as to size and type of the structures and a guarantee as to the maintenance of the buildings for the uses and according to the types agreed upon. A premium was offered of 0.20 lira (4 cents) per cubic meter (1.3 cubic yards) of structures in open areas, and of 0.15 lira (3 cents) per cubic meter (1.3 cubic yards) of structures built on ground already occupied, such premiums to be paid annually for 10 years, the buildings to be ready for occupancy by December 31, 1894. In 1905 the premium for structures on areas previously unoccupied was raised to 0.25 lira (5 cents) per cubic meter (1.3 cubic yards), and the payment of all premiums was to be continued until the close of the year 1906. A premium of 0.15 lira (3 cents) per cubic meter (1.3 cubic wards) was also granted to encourage the maintenance or restoration of hygienic conditions in houses not included under the conditions of the communal regulations of 1891. Under these various grants payments were made of 883.31 lire ($170.48) in 1893, 2,334.25 lire ($450.51) in 1894, 3,439.60 lire ($663.84) in 1895, the payments increasing to 17,816.96 lire ($3,438.67) in 1905, the total for 13 years being 99,409.84 lire ($19,186.10). In the 5-year period, 1901 to 1905, buildings were erected under the premium system having a total content of 180,284.31 cubic meters (235,811.9 cubic yards).

The conclusion was reached in the year 1893 that private initiative would not supply in satisfactory numbers the class of dwellings desired, and 80 per cent of the net returns from the Savings Bank of Venice (*Cassa di Risparmio di Venezia*) were set apart for a period of 35 years, from 1893 to 1927, for the construction by the commune of sanitary and economical dwellings. This has afforded annual sums of varying amounts, the lowest in 12 years being 25,902.12 lire ($4,999.11) in 1896, and the highest, 54,797.57 lire ($10,575.93) in 1904. The aggregate for the period 1893 to 1904 was 508,734.79 lire ($98,185.81). In order to provide a fund for the immediate commencement of the work the sum of 500,000 lire ($96,500) was appropriated at the same time. This sum became available in the years 1897 to 1899. In 1903 a like sum was added by the commune, which was paid over in 1904 and 1905. The total receipts available for the erection of dwellings, from 1897 to 1905, including earlier payments from the Savings Bank, were 1,419,574.55 lire ($273,977.89). The work of construction and administration is in the hands of a commission of 6 persons, 3 nominated by the communal council, and 3 by the Savings Bank. A report made in March, 1906, shows that at that date 37 houses had been completed or were in course of construction, furnishing from 6 to 15 apartments each, the total number of apartments being 396. Estimates for 36 dwellings with 390 apartments place the number of tenants to be accommodated at 2,150. Rentals range from 10 lire ($1.93) to 60 lire ($11.58) per month. There are but 12 apartments, however, which command a rate in excess of 30 lire ($5.79) per month, while 47 apartments rent at 14 lire ($2.70) and a like number at 21 lire ($4.05). The next highest numbers are 34 at 23 lire ($4.44) and 29 at 13 lire ($2.51). The total annual income from rentals, at the scale fixed, would be 91,842 lire ($17,725.51).

In admitting tenants, a preference is given to employees, pensioners, and manual laborers, and to persons whose family income does not exceed 1,400 lire ($270.20) per annum, or 280 lire ($54.04) per capita where the family consists of more than 5 persons. Natives and residents of Venice are preferred, and those who have children rather than those who have not.

A list of the occupations of the tenants of 94 apartments showed 13 workmen at the royal arsenal, 10 on the State railway, and 22 in various other industries; 8 were classed as private employees and 8 were employees in public service; 15 were salaried persons in the same service, 6 were public pensioners, 6 were underofficials in the royal marine, and 6 were watchmen.

OPINIONS OF THE ATTORNEY-GENERAL ON QUESTIONS AFFECTING LABOR.

[It is one of the duties of the Attorney-General of the United States to furnish opinions advising the President and the heads of the Executive Departments in relation to their official duties when such advice is requested. Opinions on questions affecting labor will be noted from time to time under the above head.]

EIGHT-HOUR LAW—EXTRAORDINARY EMERGENCIES—JETTY WORK—*Advance sheets 26 Op., page 278.*—The Secretary of War submitted an inquiry as to the construction of the eight-hour law and its application to the jetty work at the mouth of the Columbia River, which is being conducted directly by the Government. The facts on which the opinion is based are reproduced herewith:

The jetty, when completed, will consist of a pile trestle 6½ miles in length, with an enrockment of rubblestone superimposed. About 5 miles of the jetty have been constructed, and the work is now centered upon the outer 2 miles of this portion, which "is exposed to the full force of the breakers which have made the bar of the Columbia River a terror to all navigators. The seas are never smooth and often rough, even during the summer season, rendering the operation of constructing the pile trestle and conveying rock over it a matter of considerable risk to life and property." The work seems to be steadily progressing, but it is liable to frequent interruptions. Sometimes there is no interruption for two or three days, and again all work, except small jobs on shore, must be suspended for periods varying from a few hours to several days. The delays are occasioned partly by fogs, which prevent the barges bearing the stone from reaching their destination as soon as required, and partly because of vibrations imparted to the trestle by the action of the waves, which stop, for varying periods, the work of the pile driver and the carriage of the stone. On account of these natural causes, hindering the speedy completion of the jetty, it seems that laborers and mechanics are worked over eight hours a day when conditions are favorable. The question of preventing this overtime work has been considered by the officer in charge of the construction, but he believes that the employment of an extra gang of men is not practicable. The impracticability of employing an extra shift, however, does not arise from any difficulty inherent in the project. It is based almost entirely on economical considerations of speedy and cheap methods. He says:

"The question of providing an extra gang of men has had careful consideration, but it is believed to be wholly impracticable. If an extra gang were employed, the two gangs would have probably not

over five hours per day, on an average, a month during the working season, and many days at a time at least one gang would be in idleness * * *. Even if the employment of two gangs were feasible from other reaons, it would still be very objectionable from the delays that would result in changing from one gang to another, such changes being likely to come at a time when the interruption would mean the loss of a valuable opportunity. It is estimated that the labor item alone would be increased from 60 to 80 per cent if it should become necessary to employ two gangs of laborers."

Following this statement of facts the Attorney-General said:

Upon consideration of all the facts, it fairly appears, in my opinion, that the difficulties of construction are such as were known and fully appreciated at the time of the preliminary survey. They are not so grave as to compel the conviction that Congress never could have intended the statute to apply to such work. In the cases of the Eastern Dredging Company *v.* The United States and Bay State Dredging Company *v.* The United States (206 U. S., 246 [Bulletin No. 71, p. 361]), the Supreme Court, in holding that dredging an artificial channel is not one of the "public works" intended by Congress, assigned as one of its reasons "the very great difficulty, if not impossibility, of dredging in the ocean, if such a law is to govern it * * *." Here, however, it appears to me that the difficulty results at most merely in an inconvenience, and, as was pointed out in the dissenting opinion in those cases, that "is a consideration fit to be addressed to Congress" rather than to the courts or administrative officers. The work belongs to the United States and is a complete whole, having structural unity and a permanent existence, and is within the rule laid down in those cases.

Nor does it seem to me that the facts show a case of extraordinary emergency within the exception to the law contained in its first section, "in case of extraordinary emergency." That exception was not intended to have a wide but a narrow operation, and was mainly designed to excuse overtime work which must be rendered to avert some sudden, unusual exigency quickly and unexpectedly arising and calling for prompt action. In Ellis *v.* The United States (206 U. S., 246, 257), it was said:

"It needs no argument to show that the disappointment of a contractor with regard to obtaining some of his materials, a matter which he knew involved some difficulty of which he took the risk, does not create such an emergency as is contemplated in the exception to the law."

In the lower court the judge had instructed the jury:

"* * * an extraordinary emergency * * * is the sudden, unexpected happening of something not of the usual, customary, or regular kind, demanding prompt action to avert imminent danger to life, limb, health, or property. The possibility of danger is not enough."

This ruling, indirectly approved by the Supreme Court, was adopted in the case of The United States *v.* The Sheridan Kirk Contract Company (149 Fed. Rep., 809, 813); by Attorney-General Moody, now Mr. Justice Moody, in a circular letter dated October 31, 1906, and by your Department in two circulars.

In Circular No. 33, under date of July 30, 1906, it was said:

"Attention is called to the fact that the emergency provision in the law is considered to cover any extraordinary emergencies which can not be foreseen, such as might be necessary for saving life or property of the United States, *and not cases which depend for their emergency solely upon economical methods of work or importance of rapid construction.*"

Again, in Circular No. 62, under date of December 26, 1906, it was said:

"An 'extraordinary emergency' under the act is one not to be foreseen in time to avoid the necessity of exceeding the limit of the fixed daily hours of labor by the employment of more men or more shifts of men. *Mere economical considerations do not affect the question at all. It is to be assumed that in making the requirement Congress knew that under many conditions the law would impose great expense upon the Government.*"

Although there can be no doubt that in the prosecution of this work in this dangerous locality extraordinary emergencies within the exception to the law have arisen and will arise, still, upon the facts stated, I am of opinion that no case of continuing extraordinary emergency exists, and, therefore, upon the questions suggested by your communication you are advised that the eight-hour law applies to this work, and that I fully concur with the view of your Department, as expressed in the circulars quoted above, that those who fairly come within the ordinary meaning of the words "laborers and mechanics" should be restricted to no more than eight hours of effective labor upon each calendar day, irrespective of enforced idleness on other days, except when a sudden emergency must be met by prompt action.

IMMIGRATION—CONTRACT LABOR—SKILLED LABORERS—INSUFFICIENT SUPPLY—*Advance Sheets, 26 Op., page 284.*—An inquiry was submitted to the Attorney-General by the Secretary of Commerce and Labor on the subject of the admission of two lithographic artists coming from Germany. These men were detained as violators of the contract labor law, having come to the United States under contract of employment, and appealed. An agent of the American Lithographic Company, of New York, made the contract abroad and prepaid the passage of the persons in question. Other facts, and the statutes involved, are set forth in the opinion of the Attorney-General, which is in the main as follows:

Unless saved by an excepting clause or a proviso, this contract is squarely within the prohibition of the statutes referred to. While this is not denied by the appellants, it is insisted in their behalf that, under the first proviso of section 5 of the act of February 26, 1885 (23 Stat. 332), and the second and third provisos of section 2 of the act of March 3, 1903 (32 Stat. 1213), they should be admitted.

The material part of section 5 of the act of 1885 reads as follows:

"*Provided*, That skilled labor for that purpose can not be otherwise obtained; nor shall the provisions of this act apply to profes-

sional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants:"

Section 2 of the act of 1903 specifies certain classes of persons who shall be excluded; among others, "those who have been, within one year from the date of application for admission to the United States, deported as being under offers, solicitations, promises, or agreements to perform labor or service of some kind therein." This section also contains the following provisos:

"* * * *And provided further*, That skilled labor may be imported if labor of like kind unemployed can not be found in this country: *And provided further*, That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

Unless, then, it can be shown that these aliens are artists within the meaning of the statutes, or that skilled labor of like kind, unemployed, can not be found in this country, the appeal must be dismissed. A decision upon either point in favor of the aliens would entitle them to admission.

As the appeal should clearly be sustained on the second ground upon the evidence submitted, I deem it unnecessary to determine whether the appellants are artists.

On the former point the evidence is so free from contradiction that were the case being tried by a judge and jury the court would be obliged to direct a verdict for the aliens. Their counsel, at the hearing before the board of inquiry, called officers of five different lithographic companies to testify to the scarcity of lithographic artists in this country. Henry W. Kupfer, superintendent of the art drawing department of the American Lithographic Company, testified that he had been for four years in charge of that department, and that during all that time part of his duty had been to hire lithographic artists; that while his company could use to advantage twenty or twenty-two artists it had only ten. He further testified that for three or four years there had been the same difficulty in securing men to do this work. It also appears from his testimony that the company, in the belief that to meet this situation it was necessary to bring men in from abroad, applied early in 1907 to your Department to know how this might be done. The Commissioner-General of Immigration suggested that before any steps were taken looking to the importation of labor it was advisable to demonstrate to the satisfaction of the authorities that no labor of like kind, unemployed, was available in this country. In accordance with his suggestions advertisements were inserted three times a week for four weeks in twelve newspapers of general circulation in the eight cities where it seemed most likely that lithographic artists could be secured. There were thirty-two answers to these advertisements. No personal applications were made, and the company did not secure a single lithographic artist as a result of its efforts. The reasons why none of the thirty-two who communicated with the company were selected are clearly and satisfactorily explained in the record you have submitted for my consideration. The company thereupon entered into

contract, above referred to, with Kurzdorfer and Haering, informing the Commissioner-General of Immigration of the fact and of the date upon which the aliens would reach New York in order that a test case might thus be made.

All of these witnesses swore that the demand for high-grade lithographic artists was constantly increasing in this country. The work, however, has been going abroad, because the lack of skilled lithographic artists, according to the statements of these witnesses, prevents its being done in this country.

Counsel for appellants has also put in evidence a report of the Bureau of Statistics, showing that the value of lithographic importations has increased from under $950,000 for the fiscal year ending June 30, 1898, to approximately $2,700,000 for the last fiscal year. This development has been gradual and steady, every year showing an increase over the year before, and the figures for the first nine months of the current fiscal year show a still further increase.

This testimony as to the scarcity of labor is practically uncontradicted. Counsel for the Lithographic Artists, Engravers, and Designers' League attempted to show that the difficulty in securing men was due to a strike which had been declared in August, 1906. This idea is negatived by the statements of the witnesses above referred to to the effect that the shortage existed for several years prior to the time the strike was declared. Nowhere in the record is there a scintilla of evidence even tending to contradict this.

Richard Kitchett, president of that National Lithographic Artists, Engravers, and Designers' League, testified that there were about two hundred and forty members of his organization unemployed in the United States, and that this was a sufficient number to fill all vacancies and to meet the demands of the lithographic business. Counsel for the aliens then put in evidence a circular issued, with the knowledge of Mr. Kitchett, by the national advisory board of the Lithographic Artists, Engravers, and Designers' League, of which he admitted he was the head, which ran in part as follows: "The employers' own figures show that the number of men they lack in the art department is actually greater than the whole number now out, so that were the strike to be settled to-morrow there would not be enough men to fill all vacancies."

In view of this statement, issued with his authority by a board of which he was the head, his testimony to the contrary is entitled to but little weight.

I therefore advise you that the record you have submitted shows beyond any reasonable doubt that there are not in the country at this time a sufficient number of lithographic artists, employed and unemployed, to meet the demands of the business. The decision of the board of special inquiry should, therefore, be reversed, and the aliens admitted.

IMMIGRATION—PROMISE OF EMPLOYMENT—PAYMENT OF PASSAGE—STATE INTERVENTION—*Advance Sheets, 26 Op., page 411.*—The Secretary of Commerce and Labor submitted an inquiry to the Attorney-General on the question of the admission of a Cuban laborer, brought

to New Orleans by the Louisiana State board of agriculture and immigration. The facts as submitted by the Secretary are as follows:

Geronimo Garcia arrived at the port of New Orleans from Cuba on August 5, 1907. His passage was paid by Mr. Reginald Dykers, who at the time was the regularly authorized agent of the Louisiana State board of agriculture and immigration, out of funds appropriated in regular manner by the State legislature. Mr. Dykers and a Mr. L. H. Allen, the latter also being a representative of the said board, approached the alien in Habana and solicited him to immigrate to the State of Louisiana, assuring him that employment as a farm laborer would be secured for him on his arrival in said State. In exchange for the passage money the alien gave to the said officials a receipt, in which he promised to return to the Louisiana State board of agriculture and immigration within a year the sum so advanced. It is the expectation of the State agent that in such cases, upon the alien securing employment, his employer will loan him the amount necessary to reimburse the State and deduct the same from his wages; but no method has been provided whereby an employer can be compelled to make such loan, it being the intention of the State board to rely upon the moral obligation of the alien's promise to reimburse the State, and not upon any legal measures against him or his employer. The alien is left free to select such employer as he pleases, although the expectation of the agent is that aliens selected by him under this plan will be of such a reliable class that they will usually seek employment from parties who can be depended upon to advance to the alien the amount of the passage and enable him to therewith reimburse the State fund. It also appears that, while the alien Garcia had seen advertisements published abroad by the Louisiana State board of agriculture and immigration, reciting the inducements the State of Louisiana offers for immigration thereto, he was not induced to come to the United States solely by reason of such inducements; nor was the sole inducement the fact that his passage was paid by another, nor the fact, brought out in the testimony, that his father had previously come to this country. These facts operated to some extent, however, to lead him to endeavor to avail himself of the assurances given by the above-named agents that employment as a farm laborer would be secured for him on his landing in Louisiana.

Although the desire of the State agent is that Garcia, if landed, shall enter the employ of an *individual* planter who would be willing to loan him the cost of his passage and gradually deduct it from his wages, thus enabling said alien to immediately reimburse the State fund, he is, as above stated, left free to accept other employment if he so desires; and there is no evidence that shows positively that the said Garcia (or any other alien imported in accordance with the plan) might not, after landing, be employed by a corporation, association, or society as freely and in the same manner as by an individual; suggesting a possibility that, under the indirect method of attempting to eventually secure reimbursement to the State fund of the amount of the alien's passage, a condition could arise which might, perhaps, be regarded as being, remotely but yet

in effect, a payment of such passage by a corporation, society, or association.

Upon these facts the Attorney-General ruled that Garcia was not entitled to admission, as appears from his opinion, which construes the immigration act of February 20, 1907, and is as follows:

1. It appears that from this statement representatives of the Louisiana State board approached Garcia in Habana and solicited him to emigrate to Louisiana, assuring him that employment as a farm laborer would be secured for him on his arrival, and that such assurances operated as a material, if not the principal, inducement to his immigration, since neither the advertisements published by the State, nor the payment of his passage, nor his father's previous coming, was the sole inducement to his coming, but these matters operated to some extent to lead him to endeavor to avail himself of the assurances of employment given him by the representatives of the State board.

Among the classes of aliens excluded by section 2 of the act of 1907 (34 Stat. 898) are: "Persons hereinafter called contract laborers, who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled." This provision, as stated in my opinion rendered the President on March 20, 1907, excludes "aliens solicited or induced to immigrate by reason of offers or promises, even when there is no contract of employment." (26 Op. 199, 207.)

The assurances given to Garcia by the State agents constitute, in my opinion, promises of employment within the inhibition of the statute. While it is provided that aliens coming to this country in consequence of advertisements by a State of its inducements to immigration shall not be treated as coming under a promise of employment (sec. 6), there is no exception in favor of a State in reference to specific promises of employment to individual immigrants such as were held out to Garcia by the representatives of the State board. Neither is there any requirement in the act that the promises of employment in order to work exclusion must be the sole inducement to the immigration.

Therefore, since, as stated in my opinion rendered the President on March 6, 1907, the unquestionable right of Congress to regulate the admission of aliens into the United States clearly controls the action of any State agent in this respect (26 Op. 180, 193), it follows that on account of the assurances of employment that were given to Garcia as an inducement to his immigration, he should be excluded from admission.

2. Furthermore, as his passage was paid out of State funds, unless it was also clearly shown that he did not belong to any of the classes, such as paupers, etc., specifically excluded by the act, he comes within the provision of section 2 of the act (34 Stat., 898) excluding "any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes, and that said ticket or passage was not paid for

by any corporation, association, society, municipality, or foreign government, either directly or indirectly." Under this provision, while the payment of an immigrant's passage out of State funds does not of itself require his exclusion, yet such payment by a State, just as by an individual, operates to throw upon the immigrant the burden of clearly showing that he does not come within any of the otherwise excluded classes, and in case of his failure to so show he is not entitled to admission.

3. In reference to your suggestion that, under the indirect method of attempting to eventually secure reimbursement to the State fund of the amount of the alien's passage, a condition might arise which could perhaps be regarded as in effect a payment of his passage by a corporation, society, or association, as the statement of facts does not show that any such condition actually exists, or that his passage money is in fact to be so repaid, I am of the opinion, without passing upon the question as to what would be the effect of such a condition if it did arise, that the mere hypothetical possibility of such a condition would not be a ground of exclusion.

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DECISIONS OF COURTS AFFECTING LABOR.

[Except in cases of special interest, the decisions here presented are restricted to those rendered by the Federal courts and the higher courts of the States and Territories. Only material portions of such decisions are reproduced, introductory and explanatory matter being given in the words of the editor. Decisions under statute law are indexed under the proper headings in the cumulative index, page 283 et seq.]

DECISIONS UNDER STATUTE LAW.

ARBITRATION OF LABOR DISPUTES—CONSTRUCTION OF AGREEMENTS—SCOPE—JUDGMENT—CONSTRUCTION OF STATUTE—*In re Southern Pacific Company et al., United States Circuit Court, Northern District of California, 155 Federal Reporter, page 1001.*—This case was before the court to review the findings of a board of arbitration appointed under the provisions of the act of June 1, 1898, 30 Stat. 424, commonly known as the "Erdman Act." The questions submitted to the board were four in number, and are as follows:

(*a*) Whether members of the Order of Railroad Telegraphers in the employ of the employer shall legislate for train dispatchers respecting rates of pay and hours of service, or otherwise. (*b*) The question of reduction of hours of service on Sundays for employees. (*c*) The question of percentage and general increase in salaries of employees. (*d*) The question of eliminating from the operation of the schedule certain important agencies where the duties of soliciting traffic are paramount.

These questions were answered by the board after hearing the evidence, which was very voluminous, covering 1,500 pages of typewriting, besides a volume of exhibits, and in due course the following answers were rendered:

(*a*) That the members of the Order of Railroad Telegraphers in the employ of the employer shall not legislate for train dispatchers regarding rates of pay and hours of service or otherwise.

(*b*) That the regular hours of service on Sundays shall be one-half the regular hours of labor on other days: *Provided*, That at any station, where it is impracticable or inconvenient for the employer to arrange the service so as to reduce Sunday labor to one-half time, he may arrange to give the employees leave of absence and full pay for 26 days per annum, at such time or times as will cause the employer and the public the least inconvenience.

(*c*) That the percentage of general increase in salaries of employees shall be seven and one-half ($7\frac{1}{2}$) per cent, and that the apportionment of this general increase among divisions and subdivisions of the employer's lines shall be such as may be mutually agreed upon by the employer and the Order of Railroad Telegraphers.

(*d*) That the appointment of station agents whose regular duties do not include telegraphic work, and whose annual earnings in the form of salaries and commissions equal or exceed $1,300, shall not be controlled by the schedule or agreement between the employer and the Order of Railroad Telegraphers.

The act under which the submission was made provides:

That the award and the papers and proceedings, including the testimony relating thereto, certified under the hands of the arbitrators, and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the circuit court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon both parties, unless set aside for error of law apparent on the record.

Also that:

The award being filed in the clerk's office of a circuit court of the United States, as hereinbefore provided, shall go into practical operation and judgment shall be entered thereon accordingly at the expiration of ten days from such filing unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of, either by said court or on appeal therefrom.

In accordance with these provisions the telegraphers (designated as employees in the opinion) filed exceptions to the awards designated as (*a*) and (*d*), claiming that each was contrary to the law and not supported by the evidence, that the board erred in admitting certain evidence, and that finding (*d*) was not responsive to the question submitted under the agreement. They also asked for the enforcement of awards (*b*) and (*c*) by entry of judgment in due legal form.

Judge Van Vleet, before whom the matter came for hearing, disallowed the exception as to (*a*), sustained the exceptions to (*d*), and ruled that under the terms of the law he was unable to enter judgment on a part of the findings while others were in abeyance. The case is of interest as being the first in which the law in question has been in court on the points involved. The facts involved and the principles on which the various conclusions were reached are set forth in the following portions of Judge Van Vleet's opinion:

1. The record discloses that the controversy involved in the arbitration grew out of antecedent negotiations had between the parties, the employees represented by their "General Committee" and the employer by certain of its officers, in an effort to bring about certain modifications in the schedule or agreement designated "Rules and Regulations of Pay of Telegraphers," then in force between the parties, commonly referred to as the "Schedule of 1902," the date of its adoption. These negotiations, which had been in progress for several weeks without the ability to come to a complete adjustment of differences, finally culminated in the agreement of arbitration which forms the basis of the proceeding. On the hearing before the board

of arbitration, the employees took the initiative, and in submitting their case as to issue A, above stated, they introduced evidence showing that the train dispatchers in the service of the employer on the system involved, a majority of whom were members of the employees' order, had, by a vote of about two-thirds, authorized the general committee of the employees to represent and "legislate" for them in negotiations "in securing a new contract with the Southern Pacific Company." These authorizations were in writing in the form of letters and telegrams, and, while varying slightly in phraseology, were all of the same general import. They also introduced evidence tending to show the nature of the duties of train dispatchers, their status as employees, and the general mode of performing their service; and also showed that, under the existing schedule, the employees had, for a period of some eight years, been representing and legislating for the dispatchers in all negotiations of the kind. The employer did not attempt to rebut the evidence as to the fact that the dispatchers had given the employees authority to act for them, but was permitted on its part, over the objection of employees, to introduce evidence, largely expert or opinion in character, tending to show that a train dispatcher is an entirely different functionary from a telegrapher or "operator" so-called; that, while the dispatcher may be an operator, he is not necessarily such, his duties being very dissimilar in character, largely administrative, and of much greater importance, not only to his employer in carrying on the service, but to the safety and convenience of the public; that he stands in a different relation to his employer, as well in fact as in law, representing him in the discharge of his duties as an alter ego or vice-principal in his relations with other employees; and, finally, that the feature of the schedule in force permitting the employees' order to legislate for the dispatchers as to rules of employment and rates of wages had been found to work very unsatisfactorily and injuriously to the service, and was a rule which did not obtain on the lines of any other general system.

The objection urged by the employees to the action of the board under this issue, and the only point made under their exceptions thereto, is that all the evidence thus admitted in behalf of the employer, so far as it affected that particular issue, was wholly irrelevant and incompetent, and outside the issue; that the sole question involved in that issue, when properly construed, was whether the employees had been duly authorized by the train dispatchers to "legislate" for them respecting rates of pay, etc., and to represent them in the arbitration proceedings; that the moment such authorization was made to appear by the evidence the inquiry under this issue was closed, and the board was without authority to go further, but was bound to find the issue in the affirmative. But manifestly the language of that issue will not support this construction. It may be conceded that the contention is correct as to the merely incidental right of the employees to represent the dispatchers before the board of arbitration. That was purely a question of agency, and the dispatchers had a right perhaps to delegate it to any one they saw fit, regardless of the wishes of the employer. In fact, while some objection appears to have been made by the employer before the board of arbitration, it was overruled, and is not now being insisted upon. But the question whether the order "shall legislate for train dis-

patchers respecting rates of pay, hours of service, or otherwise" involves more than a mere question of agency, where the will and desire of the party conferring the power is alone to be considered. The language of the question is in the future tense, and very clearly involves a question of principle or policy affecting the relations of the parties and the methods of conducting the dealings of the employer with its dispatchers; whether, in other words, it shall for the future be permitted to deal with them directly, or shall be subject to the control of a third party, in establishing the rules, regulations, and rates of pay that shall obtain in their service. This was a question in which both parties to the controversy were at least equally interested, and one upon which it was very evidently the purpose of the framers that both parties should be heard. Had it been the purpose to submit the simple inquiry whether the employees had been empowered by the dispatchers, the issue, if put at all, would doubtless have been framed very differently; but, moreover, it would be convicting both parties to the controversy of a piece of idle folly to hold that they intended to submit to arbitration a mere question of fact so easily ascertainable. It is not contended that the character of the evidence was improper, if it was admissible at all, nor that it was not sufficient to sustain the finding, if the board's interpretation of the issue was the proper one. I am satisfied that the construction adopted by the board as to the nature of the question was correct, and that the exception can not be allowed.

2. The only ground of exception to finding D which I deem it necessary to notice is whether the facts found thereby are within the issues submitted by the agreement. A difference arose between counsel of the respective parties in the hearing before the arbitrators, as to the meaning of question D as stated in the agreement, and as to the scope of the inquiry thereunder. The employees were confining their investigation purely to the literal terms of the question by inquiring as to the number and location of stations or agencies where the paramount duty of the agent was that of soliciting traffic. The employer objected that this was unduly restricting the inquiry under that issue; that its real meaning, and the question intended to be thereby submitted, was as to the elimination from the operation of the schedule and the rule of seniority therein provided of stations or agencies, termed "starred stations," where the business of the company was such that the other duties of the agent were more important than telegraphing, where it was necessary to employ as agents men apt in business methods, familiar with traffic conditions, able successfully to solicit and gain business, superintend the men under their charge, look after the operation of freight and warehouses, handle and sell tickets of all kinds, and transact other commercial business—stations, in other words, where such qualities in the agent were of more essential consideration than his ability as an operator. And it was urged that, if the issue had been misunderstood, it should be amended or cleared up; and the board was requested to make a ruling for the guidance of the parties as to its interpretation of the question. The employees took the ground that there could be no misapprehension of the meaning of the question, that it was to be interpreted by its terms and the inquiry restricted, as therein specified, to agencies where the chief or paramount duty of the agent was soliciting traffic; and they

objected to any amendment or any such construction thereof, as suggested by the employer, as being equally without the power of the board. After some considerable argument the board requested the parties each to file in writing his interpretation of the question for their information, and that it would then determine its meaning. This request was complied with by the employer, but the employees declined, upon the ground that they regarded the language of the issue as free from ambiguity, and preferred to stand upon its terms.

Thereupon the arbitrators, by a majority vote, ruled, in effect, that, while they could not amend the language of the question, it should be construed substantially as covering the ground contended for by the employer; and they permitted the evidence to take that scope. At the outset it may be remarked, in response to certain suggestions made at the argument, that the proceeding has its inception in and rests solely upon the agreement of arbitration entered into between the parties; that it is by the terms of that instrument, when properly construed, that not only the rights of the parties thereto, but the extent of the powers of the arbitrators thereunder, are to be limited and determined. The act puts the arbitration proceedings therein provided for in no different category in this respect than the ordinary common-law arbitration. Moreover, while the proceeding is judicial in character, the relation of the parties is purely a contractual one, and in no respect, other perhaps than in the application of the rules of evidence, does the proceeding partake of the nature of a civil action. Therefore the rules of construction and interpretation applicable to contracts rather than those applicable to pleadings obtain. Nor is there anything in the act indicating, as suggested by one of the parties, that its provisions, either as to the requirements of the agreement for arbitration or the proceedings thereunder, are to be tested by any different or more liberal rules of construction than those applicable to other contracts or proceedings of a similar nature.

We are therefore to have resort, in determining the purpose of the parties under this agreement, to those usual and well-established canons of construction applicable to contracts generally; and, applying those principles, I am satisfied that, taking the language of the contract alone, the finding made in response to question D is not responsive to the issue thereby submitted. One of the cardinal rules for the interpretation of an instrument inter partes is that primarily it must be interpreted by its language, taken in its ordinary and accepted meaning, and, if that language is plain and unambiguous in itself, there is no room for construction, but it will be held to mean precisely what its terms imply. Very obviously this rule was violated in the construction placed by the arbitrators upon this feature of the agreement. The question related solely to agencies "where the duties of soliciting traffic are paramount." Nothing could well be plainer than this language. It is in no sense ambiguous, and there is nothing in itself nor elsewhere in the contract to indicate that it was employed in any technical sense, or otherwise than according to its ordinary import. It referred, neither directly nor by implication, to the character of agencies described in the finding, and the finding says nothing about the character of agencies referred to in the question. Counsel for the employer urge that the finding need not follow the precise terms as to descriptive words employed in the question, that it is sufficient if the finding involve in

substance the issue submitted, and that every intendment is to be indulged that the award is responsive to the submission. This is perfectly true, but it does not mean that the ordinary rules of construction may be set aside nor the plain import of language ignored, nor that the contract may be given an interpretation it will not bear, merely because in the judgment of the board it did not cover all that the parties should have included in it.

Counsel also insist that the terms of the contract must be construed with reference to the circumstances and the spirit in which they were understood by the parties at the time when they were employed, and, for this purpose, the antecedent negotiations and respective claims of the parties may be looked to. The general rule in this regard is that if the language of a particular clause or feature of a contract is plain, explicit, and unambiguous, not involving an absurdity on its face, and not repugnant to the context, the meaning of that language can not be controverted or affected by evidence either of the surrounding circumstances or of the understanding of the parties. What the court is to ascertain is, not what the parties may have meant or intended, but what is the meaning of the words they have used. It is only when the language is susceptible of more than one construction that the intent may be inquired into.

I am satisfied that the construction placed by the board on question D was unwarranted, and that its finding thereunder was outside the issues submitted by the parties. The facts therein found, not being within the issues, the finding must be held nugatory and not binding upon either party.

3. As to the motion for judgment on findings B and C, it is at least doubtful if, under this act, a judgment can be had on part of the award when a part is set aside; and it is likewise doubtful, independently of the act, whether under the general rules applicable to proceedings of this character the issues submitted here are not so interdependent and inseparably a part of one controversy that they must all stand or fall together. But, if I am correct in my reading of the act, the motion is premature, and those questions not now before the court. As we have seen above, the act provides that, where exceptions are filed to the award, it shall go into effect, "and judgment be entered accordingly when such exceptions shall have been finally disposed of, either by said circuit court or on appeal therefrom." The same section further provides:

"At the expiration of ten days from the decision of the circuit court upon exceptions taken to said award, as aforesaid, judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. * * * The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said circuit court, judgment pursuant thereto shall thereupon be entered by said circuit court."

From these provisions it would seem that it is not contemplated by the act, where exceptions are urged against the award, that judgment shall be entered by the circuit court until the expiration of ten days after the decision on the exceptions. If no appeal has then been taken from such decision, judgment shall be entered, either putting into effect or setting aside the award as the circumstances may warrant. If within the ten days, however, an appeal be taken, then the

entry of judgment must await the determination of such appeal, when final judgment may be entered pursuant thereto. Very evidently the act does not warrant a piecemeal judgment such as contemplated by the motion; but one final judgment, which shall be determinative of the whole matter.

Having in view the very commendable object aimed at by the act, I regret much the necessity of reaching a conclusion the result of which, if sustained, will be partially, if not entirely, to set at large the differences between the parties out of which the controversy arises. The evident purpose of the law was to afford a ready, summary, and speedy method of amicably adjusting labor disputes arising between the class of employers and employees to which it applies; and, the case being a pioneer thereunder, a more satisfactory result of its operation would have been desirable. There are certain features of the act, however, which, although doubtless intended to add to the simplicity of the procedure provided therein, are calculated to result, as in this case, in making cumbersome and burdensome its operation, and to largely negative and defeat the object of a speedy determination of a controversy. As noted above, the entire record—papers, testimony, and exhibits—consisting in this case of something over 3,000 pages, is treated as a bill of exceptions for the purpose of review in this court. This would not be so objectionable in itself if there was any requirement at the hands of the excepting party of presenting a specification of the errors relied upon in some such form as would definitely point out the objections involved in the exceptions. In this instance, the exceptions filed were in the most general terms, with no attempt therein or in the brief of counsel to point out the particular page, or even the volume in which any obnoxious evidence or ruling was to be found. As a result, the evidence upon all the issues being intermingled, the court has been put to the necessity of searching through the entire record at the expense of much valuable time, and the great and unnecessary delay of its conclusion. This result could be avoided, either by providing, as in other instances, for a bill of exceptions presenting only the specific errors relied upon, or by a provision requiring the party excepting to the award to file such a specification of errors as would serve to point more particularly the rulings complained of.

For the reasons above stated, the exceptions to finding A will be overruled, the exception to finding D will be sustained, and the motion for judgment will be denied. Let an order be entered to that effect.

CONTRACTS OF EMPLOYMENT WITH INTENT TO DEFRAUD—ADVANCES—PUNISHMENT FOR FAILURE TO REPAY—CONSTITUTIONALITY OF STATUTE—*Vance v. State, Supreme Court of Georgia, 57 Southeastern Reporter, page 889.*—A case was before the court of appeals involving the constitutionality of the act relating to the fraudulent procuring of advances, No. 345, Acts of 1903, which reads as follows:

SECTION 1. From and after the passage of this act if any person shall contract with another to perform for him services of any kind with intent to procure money, or other thing of value thereby, and

not to perform the service contracted for, to the loss and damage of the hirer; or after having so contracted, shall procure from the hirer money or other thing of value, with intent not to perform such service, to the loss and damage of the hirer, he shall be deemed a common cheat and swindler, and upon conviction shall be punished as prescribed in section 1039 of the Code.

SEC. 2. Satisfactory proof of the contract, the procuring thereon of money or other thing of value, the failure to perform the services so contracted for, or failure to return the money so advanced with interest thereon at the time said labor was to be performed, without good and sufficient cause and [with] loss or damage to the hirer, shall be deemed presumptive evidence of the intent referred to in the preceding section.

A series of questions on the various points involved was submitted by the court of appeals to the supreme court of the State, which upheld the constitutionality of the act. From the opinion of the court, as given by Judge Lumpkin, the following is quoted:

1. Is the act of 1903 unconstitutional as being repugnant to and in contravention of clause 1, sec. 14, art. 8, of the Constitution of the United States (continued in Civ. Code 1895, sec. 6030), as to the provision therein contained that no State shall deny to any person within its jurisdiction the equal protection of the laws? The contention is that, in the class of contracts dealt with and contemplated by the act, the person or persons contracting to perform services are denied, as against the person or persons for whom such services are to be rendered, the equal protection of the laws, in that it subjects the former, under certain contingencies, to prosecution and punishment, and at the same time affords the latter absolute immunity from prosecution or punishment by reason of any infraction of said contractual obligations. If the act of 1903 sought to make it penal to violate a contract or fail to pay a debt, it would be patently unconstitutional. But this court has held that "such act does not violate the constitutional inhibition against imprisonment for debt; the legislative purpose being, not to punish for a failure to comply with the obligation, but for the fraudulent intention with which the money or other thing of value is procured." (Lamar *v.* State, 120 Ga. 312, 47 S. E. 958; Banks *v.* State, 124 Ga. 15 (4), 52 S. E. 74, 2 L. R. A. (N. S.) 1007; Townsend *v.* State, 124 Ga. 69, 52 S. E. 293.) This being true, it is apparent that the objection is without merit. In the nature of things the master does not ordinarily procure advances from his servant, or the employer from his employee. Legitimate classification is not unjust discrimination. There are a very large number of laws upon the statute books imposing penalties upon certain persons, without also providing for penalties as to others, though having some relation with them. The abandonment of a child by its father is a misdemeanor. (Pen. Code 1895, sec. 114.) But it is not declared criminal for a child to abandon its father. It is evident that the same duty does not rest upon both, and the two are not in the same situation. Enticing away apprentices is unlawful. (Pen. Code 1895, sec. 119.) But nothing is said as to putting any penalty on the employer. * * * It is criminal for bank officers to purchase any bill, check, or other evidence of debt issued by the bank for less than its face

value; but the seller is not punished. (Pen. Code 1895, sec. 209.) These are only a few of the many instances which might be cited; but they will suffice to show that, where two persons deal with each other and the conduct of one requires safeguarding, criminal laws have been shaped for that purpose, and they have never been considered unconstitutional.

2. It is further urged that the equal protection of the law is denied, because the person contracted with, and for whom services are to be rendered, is permitted to testify to a state of facts declared to be sufficient to carry the presumption of fraudulent intent, whereas the accused is not permitted to testify, and has no opportunity or means equal to those afforded to the person contracted with of proving, that no fraudulent intent existed, and the act lays down no measure of proof by which such presumption may be overcome. Here, again, the error is made of treating the act as punishing a breach of contract, instead of a fraudulent transaction. To say that the equal protection of the law is denied, because a prosecutor can testify and the person accused of crime can not, would upset the practice in criminal procedure for centuries past. The privilege to the accused to testify as a witness is conferred by statute in some States. It is not a common-law right. In this State it does not exist generally, but only in certain cases.

3. The contention that no measure of proof is laid down by the act of the legislature by which such presumption may be overcome is without merit. The general law in regard to criminal procedure is to be considered in connection with this act. The presumption of sanity, of a continuance of a state of facts permanent in its nature when once shown to have existed, and other disputable presumptions, are declared by law. Upon the whole case, in a criminal prosecution, the State must show the guilt of the accused beyond a reasonable doubt. But the act is not unconstitutional because on its face it does not declare the exact amount of proof which will overcome a disputable presumption raised by law from a given state of facts.

4. It is further contended that the act is violative of paragraph 1, sec. 4, art. 1, of the State constitution (Civ. Code 1895, sec. 5732), and especially that portion thereof which declares that "laws of a general nature shall have uniform operation throughout the State." It is argued that the act of 1903 does not have uniform operation, in that it singles out and deals with a given character of contracts, and prescribes with reference thereto "different rules, different conditions, and different penalties from all other contracts of whatever nature," and because it imposes heavier burdens upon the person or persons who contract to perform services, while affording to the person or persons for whom such services are to be performed immunity from prosecution and punishment, and also because it groups a class of citizens who contract with reference to the performance of services, and imposes on some of them certain conditions, prosecutions, and punishments not inflicted upon others. Here, again, the error of treating the act as punishing for a violation of a contract appears. The law is general and uniform, applying uniformly throughout the State to all persons falling within its terms. It is well settled that reasonable classification may be made, and if the law applies uniformly to all within the class it is not unconstitutional. If this were

not so, all the laws giving liens to laborers, material men, contractors, and others against the person with whom they contract, or for the improvement of whose property they furnish labor or materials, without providing a counter lien of some sort in favor of the other party to the contract, would be unconstitutional. We deem it unnecessary to cite authorities in support of this well-settled proposition.

5. Again, it is urged that section 2 of the act is repugnant to paragraph 5 of section 1 of article 1 of the constitution of the State (Civ. Code 1895, sec. 5702), and particularly to that portion of the paragraph which provides that the accused shall have a public and speedy trial by an impartial jury, in that said act arbitrarily fixes the measure of evidence by which the jury may presume guilt, whereas the constitutional provision contemplates that the jury alone shall determine that question. This point is in effect controlled by the decision in Banks *v.* State, 124 Ga. 15 (6), 52 S. E. 74, 2 L. R. A. (N. S.) 1007, where it was held that "a provision of the act of 1903 to the effect that proof of the contract of hiring, the procuring thereon of money or other thing of value, the failure to perform the service so contracted for or to return the money or other thing of value, the failure to perform the service so contracted for or to return the money so advanced, with interest thereon to the time the labor was to be performed, without good and sufficient cause, and loss or damage to the hirer, shall be presumptive evidence of a fraudulent intent in the procurement of the advances, is not an assumption of judicial functions by the legislature." If the act made the presumption of intent arising from proof of certain facts conclusive, rather than disputable, or if the inference was arbitrary and without reasonable connection with the premises on which it was predicated, a more serious question would arise. But such is not the case. * * * The act is not unconstitutional on this ground.

6. It is still further contended that the act, particularly the second section thereof, is repugnant to the provisions of paragraph 17, section 7, art. 3, of the constitution of the State (Civ. Code 1895, sec. 5779), wherein it is provided that "no law or section of the Code shall be amended or repealed by mere reference to its title, or to the number of the section of the Code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, as well as the alteration to be made." It is said that the provisions of the act of 1903 are in direct conflict with section 1033 of the Penal Code of 1895, which provides that "on the trial of all criminal cases the jury shall be the judges of the law and the facts, and shall give a general verdict of 'guilty' or 'not guilty;'" that the act necessarily works a repeal of this section as to the class of prosecutions within its purview; and that no reference is made to that section of the Code. The particular point of conflict between the section and the act urged is that the latter provides what evidence will raise a presumption of guilt, whereas under the provisions of the section of the Code the jury are the sole judges of the facts and of their probative value. What has been said in the preceding division of this opinion substantially decides this objection. The act of 1903 is not in conflict with and does not repeal the section of the Code quoted above. Upon the whole case that section is still the law, construed as it has heretofore been by this court. The two laws are to be construed in harmony. The establishment by

legislation of a rule of presumptive intent from acts done in carrying out that intent does not violate the constitutional provisions last mentioned above.

EMPLOYERS' LIABILITY—RAILROAD COMPANIES—POWERS OF FEDERAL GOVERNMENT—INTERSTATE COMMERCE—CONSTITUTIONALITY OF STATUTE—*Howard v. Illinois Central Railroad Company; Brooks v. Southern Pacific Company, Supreme Court of the United States, Nos. 216, 222, October Term, 1907.*—These cases were before the Supreme Court on appeal from the United States circuit court for the western district of Tennessee [see Bulletin No. 68, p. 192] and for the western district of Kentucky [see Bulletin No. 68, p. 188], respectively, the Federal employers' liability law of 1906 having been in both instances declared unconstitutional. The employees in both instances were firemen employed on locomotives engaged in moving interstate commerce trains, and on judgment against the plaintiffs appeals were taken, the cases being argued not only by the attorneys of the parties in interest, but also by the Attorney-General of the United States, the two cases being combined and heard as one. The facts are immaterial, as the decision turned entirely on the question of the constitutionality of the law, which was decided in the negative, by a divided court. On account of the importance of the cases, both the opinion of the court and the principal part of the dissenting opinion are reproduced, as well as the text of the law itself.

Judge White, who announced the opinion of the court, after a statement of the history of the cases, said:

Before coming to consider the contentions concerning the constitutionalty of the act,(a) we notice certain suggestions which proceed upon the assumption that they may concern the issue for decision. It

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a CHAPTER 3073. An act relating to liability of common carriers in the District of Columbia and Territories and common carriers engaged in commerce between the States and between the States and foreign nations to their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, shall be liable to any of its employees, or, in the case of his death, to his personal representative for the benefit of his widow and children, if any; if none, then for his parents; if none, then for his next of kin dependent upon him, for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works.

SEC. 2. That in all actions hereafter brought against any common carriers to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negli-

is said that the statute inordinately extends the power of Congress and unduly diminishes the legislative authority of the States, since it seeks to exert the power of Congress as to the relation of master and servant, a subject hitherto treated as being exclusively within the control of the States, and that in practice its execution will cripple the State and enlarge the Federal judicial power, since its effect will be to cause every action concerning an injury to a servant employed by a common carrier who may engage in interstate commerce to cease to be a matter of State jurisdiction and to be cognizable in the Federal courts. Moreover, it is said, the statute will create confusion and uncertainty as to the rights of those dwelling within the States, that it will operate injuriously upon all who choose to engage in interstate commerce as a common carrier, since those who so do will become subject to the liability which the statute creates, to be tested by the rules of negligence which the statute embodies, although such rules be unknown to the laws of the several States. Besides, the statute, it is urged, discriminates against all who engage as common carriers in interstate commerce, since it makes them responsible without limit as to the amount to one servant for an injury suffered by the acts of a coservant, even in a case where the negligence of the injured servant has contributed to the result, hence placing all employers who are common carriers in a disfavored and all their employees in a favored class. Indeed it is insisted the statute proceeds upon contradictory principles, since it imposes the increased responsibility just stated upon the master presumably in order to make him more careful in the selection of his servants, and yet minimizes the necessity for care on the part of the servant by allowing recovery, although he may have been negligent.

But, without even for the sake of argument conceding the correctness of these suggestions, we at once dismiss them from consideration as concerning merely the expediency of the act and not the power of Congress to enact it. We say this since, in testing the constitutionality of the act, we must confine ourselves to the power to pass it and may not consider evils which it is supposed will arise from the execution of the law, whether they be real or imaginary.

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gence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

SEC. 3. That no contract of employment, insurance, relief, benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief, benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however*, That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief, benefit, or indemnity that may have been paid to the injured employee, or in case of his death to his personal representative.

SEC. 4. That no action shall be maintained under this act unless commenced within one year from the time the cause of action accrued.

SEC. 5. That nothing in this act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

Approved, June 11, 1906.

All the questions which arise concern the nature and extent of the power of Congress to regulate commerce. That subject has been so often here considered and has been so fully elaborated in recent decisions, two of which are noted in the margin,(a) that we content ourselves, for the purposes of this case, with repeating the broad definition of the commerce power as expounded by Mr. Chief Justice Marshall in Gibbons *v.* Ogden, 9 Wheat. 1, 196, where he said:

"We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations, and among the several States, is vested in Congress as absolutely as it would be in a single government, having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States."

Accepting, as we now do and as has always been done, this comprehensive statement of the power of Congress, we also adopt and reiterate the perspicuous statement made in the same case (p. 194), of those matters of State control which are not embraced in the grant of authority to Congress to regulate commerce:

"It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. * * * The genius and character of the whole Government seem to be, that its action is to be applied to all the external concerns of the Nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government."

We think the orderly discussion of the question may best be met by disposing of the affirmative propositions relied on to establish that the statute conflicts with the Constitution.

In the first place, it is asserted that there is a total want of power in Congress in any conceivable aspect to regulate the subject with which the act deals. In the second place it is insisted the act is void, even although it be conceded, for the sake of argument, that some phases of the subject with which it is concerned may be within the power of Congress, because the act is confined not to such phases, but asserts control over many things not in any event within the power to regulate commerce.

While it may be, if we indulged, for the sake of argument, in the hypothesis of limited power upon which the second proposition rests, it would result that a consideration of the first proposition would be

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(a) Lottery Case, 188 U. S. 321, 345, et seq.; Northern Securities Co. *v.* United States, 193 Ib. 197, 335, and cases cited.

unnecessary because the act would be found to be repugnant to the Constitution, because embracing provisions beyond such assumed and restricted authority we do not think we are at liberty to avoid deciding whether, in any possible aspect, the subject to which the act relates is within the power of Congress. We say this, for if it be that from the nature of the subject no power whatever over the same can, under any conceivable circumstances, be possessed by Congress, we ought to so declare, and not by an attempt to conceive the inconceivable assume the existence of some authority, thus it may be, misleading Congress and giving rise to future contention.

1. The proposition that there is an absolute want of power in Congress to enact the statute is based on the assumption that as the statute is solely addressed to the regulation of the relations of the employer to those whom he employs and the relation of those employed by him among themselves, it deals with subjects which can not under any circumstances come within the power conferred upon Congress to regulate commerce.

As it is patent that the act does regulate the relation of master and servant in the cases to which it applies, it must follow, that the act is beyond the authority of Congress if the proposition just stated be well founded. But we may not test the power of Congress to regulate commerce solely by abstractly considering the particular subject to which a regulation relates, irrespective of whether the regulation in question is one of interstate commerce. On the contrary, the test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce. We think the unsoundness of the contention, that because the act regulates the relation of master and servant, it is unconstitutional, because under no circumstances and to no extent can the regulation of such subject be within the grant of authority to regulate commerce, is demonstrable. We say this because we fail to perceive any just reason for holding that Congress is without power to regulate the relation of master and servant, to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce, and therefore are within the grant to regulate that commerce or within the authority given to use all means appropriate to the exercise of the powers conferred. To illustrate: Take the case of an interstate railway train, that is, a train moving in interstate commerce, and the regulation of which therefore is, in the nature of things, a regulation of such commerce. It can not be said that because a regulation adopted by Congress as to such train when so engaged in interstate commerce deals with the relation of the master to the servants operating such train or the relations of the servants engaged in such operation between themselves, that it is not a regulation of interstate commerce. This must be, 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 to deny it, or at all events to recognize the power and yet to render it incomplete.

Because of the reasons just stated we might well pass from the consideration of the subject. We add, however, that we think the

error of the proposition is shown by previous decisions of this court. Thus the want of power in a State to interfere with an interstate commerce train, if thereby a direct burden is imposed upon interstate commerce, is settled beyond question. (Mississippi R. R. Co. *v.* Illinois Cent. R. R., 203 U. S. 335, 343, and cases cited; Atlantic Coast Line R. R. *v.* Wharton et al., Railroad Commissioners, 207 U. S. — [28 Sup. Ct. 121].) And decisions cited in the margin,(a) holding that State statutes which regulated the relation of master and servant were applicable to those actually engaged in an operation of interstate commerce, because the State power existed until Congress acted, by necessary implication, refute the contention that a regulation of the subject, confined to interstate commerce, when adopted by Congress would be necessarily void because the regulation of the relation of master and servant was, however intimately connected with interstate commerce, beyond the power of Congress. And a like conclusion also persuasively results from previous rulings of this court concerning the act of Congress, known as the Safety Appliance Act. (Johnson *v.* Southern Pacific Co., 196 U. S. 1 [Bulletin No. 56, p. 303]; Schlemmer *v.* Buffalo, Rochester, etc., Ry., 205 Ib., 1 [Bulletin No. 71, p. 385].)

2. But it is argued, even though it be conceded that the power of Congress may be exercised as to the relation of master and servant in matters of interstate commerce, that power can not be lawfully extended so as to include the regulation of the relation of master and servant, or of servants among themselves, as to things which are not interstate commerce. From this it is insisted the repugnancy of the act to the Contitution is clearly shown, as the face of the act makes it certain that the power which it asserts extends not only to the relation of master and servant and servants among themselves as to things which are wholly interstate commerce, but embraces those relations as to matters and things domestic in their character and which do not come within the authority of Congress. To test this proposition requires us to consider the text of the act.

From the first section it is certain that the act extends to every individual or corporation who may engage in interstate commerce as a common carrier. Its all-embracing words leave no room for any other conclusion. It may include, for example, steam railroads, telegraph lines, telephone lines, the express business, vessels of every kind, whether steam or sail, ferries, bridges, wagon lines, carriages, trolley lines, etc. Now, the rule which the statute establishes for the purpose of determining whether all the subjects to which it relates are to be controlled by its provisions is that any one who conducts such business be a " common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States," etc. That is, the subjects stated all come within the statute when the individual or corporation is a common carrier who engages in trade or commerce between the States, etc. From this it follows that the statute deals with all the concerns of the individuals or corporations to which it relates if they engage as common carriers in trade or commerce between the States, etc., and

(a) Sherlock *v.* Alling, 93 U. S. 99; Missouri Pacific Ry. Co. *v.* Mackey, 127 Ib. 205; Minneapolis, etc., Ry. Co. *v.* Herrick, 127 Ib. 210; Chicago, &c., Ry. Co. *v.* Pontius, 157 Ib. 209; Tullis *v.* Lake Erie & W. R. R., 175 U. S. 348 [Bulletin No. 29, p. 890].

does not confine itself to the interstate commerce business which may be done by such persons. Stated in another form, the statute is addressed to the individuals or corporations who are engaged in interstate commerce and is not confined solely to regulating the interstate commerce business which such persons may do—that is, it regulates the persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce.

And the conclusion thus stated, which flows from the text of the act concerning the individuals or corporations to which it is made to apply, is further demonstrated by a consideration of the text of the statute defining the servants to whom it relates.

Thus the liability of a common carrier is declared to be in favor of "any of its employees." As the word "any" is unqualified, it follows that liability to the servant is coextensive with the business done by the employers whom the statute embraces; that is, it is in favor of any of the employees of all carriers who engage in interstate commerce. This also is the rule as to the one who otherwise would be a fellow-servant, by whose negligence the injury or death may have been occasioned, since it is provided that the right to recover on the part of any servant will exist, although the injury for which the carrier is to be held resulted from "the negligence of any of its officers, agents or employees."

The act then being addressed to all common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly outside of the power of Congress to regulate commerce. Without stopping to consider the numerous instances where although a common carrier is engaged in interstate commerce such carrier may in the nature of things also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of the power which is exerted by the statute. Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a State. Take again the same road having shops for repairs, and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of its being engaged in other independent enterprises. Take a telegraph company engaged in the transmission of interstate and local messages. Take an express company engaged in local as well as in interstate business. Take a trolly line moving wholly within a State as to a large part of its business and yet as to the remainder crossing the State line.

As the act thus includes many subjects wholly beyond the power to regulate commerce and depends for its sanction upon that authority, it results that the act is repugnant to the Constitution, and can not be enforced unless there be merit in the propositions advanced to show that the statute may be saved.

On the one hand, while conceding that the act deals with all common carriers who are engaged in interstate commerce because they so engage, and indeed, while moreover conceding that the act was

originally drawn for the purpose of reaching all the employees of railroads engaged in interstate commerce to which it is said the act in its original form alone related, it is yet insisted that the act is within the power of Congress, because one who engages in interstate commerce thereby comes under the power of Congress as to all his business and may not complain of any regulation which Congress may choose to adopt. These contentions are thus summed up in the brief filed on behalf of the Government:

"It is the *carrier* and not its employees that the act seeks to regulate, and the carrier is subject to such regulations because it is engaged in interstate commerce.

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"By engaging in interstate commerce the carrier chooses to subject itself and its business to the control of Congress, and can not be heard to complain of such regulations.

"* * * It is submitted that Congress can make a common carrier engaged in interstate commerce liable to *any one* for its negligence who is affected by it; and if it can do that, necessarily it can make such carrier liable to all of its employees."

On the other hand, the same brief insists that these propositions are irrelevant, because the statute may be interpreted so as to confine its operation wholly to interstate commerce or to means appropriate to the regulation of that subject, and hence relieves from the necessity of deciding whether, if the statute could not be so construed, it would be constitutional. In the oral discussion at bar this latter view was earnestly insisted upon by the Attorney-General. Assuming, as we do, that the propositions are intended to be alternative, we disregard the order in which they are pressed in argument, and therefore pass for a moment the consideration of the proposition that the statute is constitutional, though it includes all the subjects which we have found it to embrace, in order to weigh the contention that it is susceptible on its face of a different meaning from that which we have given it, or that such result can be accomplished by the application of the rules of interpretation which are relied upon.

So far as the face of the statute is concerned, the argument is this, that because the statute says carriers engaged in commerce between the States, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words "any employee" as found in the statute should be held to mean any employee when such employee is engaged only in interstate commerce. But this would require us to write into the statute words of limitation and restriction not found in it. But if we could bring ourselves to modify the statute by writing in the words suggested the result would be to restrict the operation of the act as to the District of Columbia and the Territories. We say this because immediately preceding the provision of the act concerning carriers engaged in commerce between the States and Territories is a clause making it applicable to "every common carrier engaged in trade or commerce in the District of Columbia or in any Territory of the United States." It follows, therefore, that common carriers in such Territories, even although not engaged in interstate commerce, are by the act made liable to "any" of their employees, as therein defined. The legislative power of Congress over

the District of Columbia and the Territories being plenary and not depending upon the interstate commerce clause, it results that the provision as to the District of Columbia and the Territories, if standing alone, could not be questioned. Thus it would come to pass, if we could bring ourselves to modify the statute by writing in the words suggested; that is, by causing the act to read "any employee when engaged in interstate commerce," we would restrict the act as to the District of Columbia and the Territories, and thus destroy it in an important particular. To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; that is, to destroy in order to save and to save in order to destroy.

The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose. Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy. They were all, after a full review of the authorities, restated and reapplied in a recent case. (Illinois Central Railroad *v.* McKendree, 203 U. S. 514, and authorities there cited.)

As the act before us by its terms relates to every common carrier engaged in interstate commerce and to any of the employees of every such carrier, thereby regulating every relation of a carrier engaged in interstate commerce with its servants and of such servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate. On this subject the opinion in the Trade-mark cases, 100 U. S. 82, where an act of Congress concerning trade-marks was held to be unconstitutional, because too broad in its scope, is pertinent and instructive. The court said (p. 99):

"If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely, make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the act of Congress, and in others under State law. Cooley Const. Lim. 178, 179; Commonwealth *v.* Hitchings, 5 Gray (Mass.) 482."

3. It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the prop-

osition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which can not be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures.

4. Reference was made to the report of a committee submitted to the House of Representatives on the coming in of the bill which finally became the act in question. We content ourselves on this subject with saying that that report, we think, instead of adding force to the argument that the plain terms of the act should be disregarded, tends to the contrary. And the same observation is appropriate to the reference made to the text of the Safety Appliance Act of March 2, 1893, which, it is insisted, furnishes a guide which, if followed, would enable us to disregard the text of the act. We say this because the face of that act clearly refutes the argument based upon it. It is true that the act, like the one we are considering, is addressed to every common carrier engaged in interstate commerce, but this direction is followed by provisions expressly limiting the scope and effect of the act to interstate commerce, which are wholly superfluous if the argument here made concerning the statute before us be sound.

We deem it unnecessary to pass upon the merits of the contentions concerning the alleged repugnancy of the statute, if regarded as otherwise valid, to the due process clause of the Fifth Amendment to the Constitution, because the act classifies together all common carriers. Although we deem it unnecessary to consider that subject, it must not be implied that we question the correctness of previous decisions noted in the margin,(a) wherein State statutes were held not to be repugnant to the Fourteenth Amendment, although they classified steam railroads in one class for the purpose of applying a rule of master and servant. We further deem it unnecessary to express an opinion concerning the alleged repugnancy of the statute to the Seventh Amendment, because of the provision of the act as to the power of the jury. In saying this, however, we must not be considered as intimating that we think the provision in question is susceptible of the construction placed on it in argument, or that if it could be so construed it would be constitutional.

Concluding, as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we

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(a) Missouri Pacific Ry. Co. *v.* Mackey, 127 U. S. 205; Minneapolis, etc., Ry. Co. *v.* Herrick, 127 Ib. 210; Chicago, etc., R. R. *v.* Pontius, 157 Ib. 209.

are of the opinion that the courts below rightly held the statute to be repugnant to the Constitution and nonenforcible; and the judgments below are, therefore, affirmed.

Mr. Justice Day concurs in this opinion.

Mr. Justice Peckham concurring.

I concur in the result of the foregoing opinion, but I am not prepared to agree with all that is stated as to the power of Congress to legislate upon the subject of the relations between master and servant.

I concur in the proposition, that as to traffic or other matters within the State, the act is unconstitutional, and it can not be separated from that part which is claimed to be valid as relating to interstate commerce. As that is all that is necessary to decide in this case, I place my concurrence upon that part of the opinion which decides it.

I am authorized to state that the Chief Justice and Mr. Justice Brewer agree in this view.

Mr. Justice Moody dissenting.

I am unable to agree in the judgment of the Court. Under ordinary circumstances, where the judgment rests exclusively, as it does here, upon a mere interpretation of the words of a law, which may be readily changed by the lawmaking branches of the Government, if they be so minded, a difference of opinion may well be left without expression. But where the judgment is a judicial condemnation of an act of a coordinate branch of our Government it is so grave a step that no member of the Court can escape his own responsibility, or be justified in suppressing his own views, if unhappily they have not found expression in those of his associates. Moved by this consideration, and solicitous to maintain what seems to me the lawful powers of the nation, I have no doubt of my duty to disclose fully the opinions which, to my regret, differ in some respects from those of some of my brethren.

The only question which these cases presents is the constitutionality of the Employers' Liability Act, which, briefly stated, provides a remedy for the injury or death of the employees of territorial, interstate and foreign common carriers, caused by the negligence of the carrier. The defendants were both interstate carriers, and these actions were brought to recover for the deaths of their employees who, at the time, were engaged in interstate transportation. The judgment of the Court does not deny that it is within the power of the Congress to provide a remedy for the injury or death of employees engaged in the conduct of territorial, interstate and foreign commerce. It rests upon the ground that this statute is unconstitutional, because it seeks to do more than that, and regulates the liability of employers while engaged in interstate commerce or in manufacture. At the threshold I may say that I agree that the Congress has not the power directly to regulate the purely internal commerce of the States, and that I understand that to be the opinion of every member of the Court.

The constitutionality of the act was attacked in the arguments before us upon three grounds. First, because it seeks to control by provisions so inseparable that they are incapable of resolution into their several parts, not only the territorial, foreign and interstate business of carriers, but also their intrastate business, which, by the Constitution, is reserved for the government of the States. Second, because, if the act should be interpreted as not intruding upon the domain of the States by directly regulating commerce exclusively within the States, yet, that legislation fixing the obligation of employers engaged in interstate and foreign commerce to their employees in such commerce, for injuries suffered by the latter in the course of the employment, is not the regulation of commerce, and, therefore, is not within any power conferred by the Constitution upon Congress. Third, because, even if the act is concerned with a subject which is within the power of Congress, yet the specific changes made by it in the common law rules governing the relations of employer and employee exceed the legislative power or violate the constitutional prohibitions which restrict that power.

I am of opinion that the act is not open to any of the constitutional objections urged against it, and shall consider all of the objections in the order in which I have stated them.

In the consideration of the scope of the statute for the purpose of determining whether it seeks to control that part of commerce which is beyond the power of Congress and subject only to the government of the States, it is to be observed that the opening words of Congress are in recognition of the limitation of its authority and of the constitutional distinction between commerce among the States and with foreign nations on the one hand and commerce within the States on the other hand. The commands of the law are addressed only to "common carriers engaged in trade and commerce" in the territories, with foreign nations, and among the States, and with respect to carriers engaged in commerce within the States the law is impressively silent. The expression and enumeration of the parts of commerce which are clearly within the control of Congress is equivalent to an exclusion of the part which is not within its control. In the careful selection of the language of this law the legislators may well have had in mind the words of Chief Justice Marshall which have received the constant approval of this Court. * * * [See quotation above, p. 218.] From the enumeration of territorial, interstate, and foreign commerce, and the omission of the internal commerce of the State, is it not clear that the commerce which is exclusively internal to the State, and does not affect any other character of commerce, was intended to be outside the purview of the law? Does not a proper respect for the acts of Congress and the strong presumption that it will not exceed its powers, so frequently declared by this Court, require us to believe that when the kinds of commerce within its undoubted control are carefully enumerated all the words of the law, however general, are to be referred solely to that commerce and no other?

If carriers were separated by a clear line of division, so that one class were engaged exclusively in interstate and foreign commerce, and the other class were engaged exclusively in commerce within the States, it would not, of course, occur to any mind that this act had any reference whatever to the State carriers. But there is no such

hard and fast line of division. Carriers often, and where they are railroads, usually are, as a matter of fact, engaged both in interstate and foreign commerce over which Congress has the control, and intrastate commerce over which the States have the control. Applying the law under consideration to the conditions as they actually exist, it is said that its words are so general and sweeping as to comprehend within its benefits not only the employees of the interstate carrier engaged in the business of interstate carriage, but also the employees of the same carrier engaged in the business of intrastate carriage which it may and usually does conduct. Counsel illustrated their argument by suggesting that if a carrier doing an interstate business on the Pacific slope also conducted a local trolley line wholly along the Atlantic seaboard within a single State, an employee on the local trolley line would, by the terms of this act, be entitled to its benefits. If such be the necessary interpretation of the statute plainly it exceeds the power of Congress, for Congress certainly has no right to regulate the purely internal commerce of a State. Nor can the statute be saved by rejecting that part of it which is unconstitutional because its provisions are single and incapable of separation. The vicious part, if such exist, is so intermingled with that which is good that it can not be eliminated without destroying the whole structure.

Which interpretation, then, should be adopted? That which regards the law as prescribing the liability of the carrier only to those employees who are engaged in the work of interstate and foreign commerce, or that which extends the benefits of the law also to those employees engaged in work which has no relation whatever to such commerce. In answering this question it must not be forgotten that, if the latter interpretation be adopted, in the opinion of the whole Court the act is beyond the constitutional power of Congress. That is a consideration of vast importance, because the Court has never exercised the mighty power of declaring the acts of a coordinate branch of the Government void except where there is no possible and sensible construction of the act which is consistent with the fundamental organic law. The presumption that other branches of the Government will restrain themselves within the scope of their authority, and the respect which is due to them and their acts, admits of no other attitude from this Court. This is more than a canon of interpretation, it is a rule of conduct resting upon considerations of public policy, and, in the exercise of the delicate function of condemning the acts of coordinate and equal branches of the Government, under the same obligation to respect the Constitution as ourselves, has been observed from the beginning.

Judge Moody cited a number of cases in support of the rule, and continuing, said:

There is no doubt that the rule exists, there is no doubt that it is wise, and promotes the mutual respect between the different branches of the Government which is so essential to the welfare of all, and that it requires us, if it is within our power, to give to the words of the statute before us a meaning which will confine its provisions to subjects within the control of Congress. If two interpretations are possible our plain duty is to adopt that which sustains the statute as a lawful exercise of authority and not that which condemns it as a usurpation.

The argument which supports a construction of the statute which would include within its provisions intrastate commerce is readily stated. It is said that "every common carrier" engaged in territorial, foreign, or interstate trade is made "liable to any of its employees * * * for all damages which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect" in its instrumentalities, and that, as there is no qualification of or exception to the generality of the language descriptive of the employees or instrumentalities, it must be deemed to include those engaged and used solely in intrastate commerce, and even in manufacture, as well as those engaged and used in other commerce. But I venture to think that this argument rests upon too narrow ground. It contemplates merely the words of the statute; it shuts out the light which the Constitution sheds upon them; it overlooks the significance of the enumeration of the kinds of commerce clearly within the national control and the omission of the commerce beyond that control—an enumeration and omission which characterizes, colors, and restrains every word of the statute—and it neglects the presumptions in favor of the validity of the law and of the obedience of Congress to the commands of the Constitution, which can not with propriety be disregarded by this Court. Taking into account these missing aids to construction, it becomes quite easy, quite reasonable, and, in my opinion, quite necessary, to construe the act as conferring its benefits only upon employees engaged in some fashion in the commerce which is enumerated in it and is undoubtedly under the control of Congress. Even without these guides for discovering the intent of Congress, which the uniform practice of the Court compels us to use, it is natural to suppose that, when territorial, interstate, and foreign carriers only are mentioned and every such carrier is declared to be liable "to any of its employees," only its employees in such commerce are intended. With those guides the conclusion appears to me irresistible, for they show that if the words, "any of its employees," in the context where they are used, are capable of meaning all of the employees upon any kind of work, yet their generality should be restrained so as to include only those who are subject to the power of the lawmaking body. The case of McCullough *v.* Virginia, 172 U. S. 102, is precisely in point here. An act of the general assembly of the State of Virginia provided for refunding the State debt by the issue of coupon bonds for two-thirds of the total amount of that debt. It was enacted that the coupons should "be receivable at and after maturity for all taxes, debts, dues, and demands due the State." There was at the time of the passage of the refunding act a provision of the constitution of Virginia requiring all school taxes to be paid in cash, and it had been held by this Court that the constitutional provision disabled the Virginia legislature from providing that the coupons should be receivable for such taxes. McGahey *v.* Virginia, 135 U. S. 662. The argument was then made that as the statute providing for the receivability of the coupons for "all taxes, debts, dues, and demands on the State" was in part beyond the constitutional power of the legislature, the contract evidenced by that statute was entirely void. The Court, speaking by Mr. Justice Brewer, answered this argument by saying, p. 112: "It ignores the difference between the statute and the contract, and confuses the two entirely distinct matters of construction and

validity. The statute precedes the contract. Its scope and meaning must be determined before any question will arise as to the validity of the contract which it authorizes. It is elementary law that every statute is to be read in the light of the Constitution. However broad and general its language, it can not be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach. It is the same rule which obtains in the interpretation of any private contract between individuals. That, whatever may be its words, is always to be construed in the light of the statute; of the law then in force; of the circumstances and conditions of parties. So, although general language was introduced into the statute of 1871, it is not to be read as reaching to matters in respect to which the legislature had no constitutional power, but only as to those matters within its control. And if there were, as it seems there were, certain special taxes and dues which under the existing provisions of the State constitution could not be affected by legislative action, the statute is to be read as though it in terms excluded them from its operation." The language quoted was not obiter. The case turned upon the construction of the statute and reversed the construction by the highest court of the State of its own statute, as well as its judgment, that the statute thus construed was inconsistent with the State constitution, because "all taxes" included taxes beyond the power of the legislature. I am unable to reconcile the judgment in that case with the conclusion which is reached by the Court in this. The reasoning which, in that case, led the Court to construe a statute providing that the coupons should be receivable for "all taxes" to mean only for such taxes as the legislature had the constitutional power to declare payable in such a manner, is equally potent to lead the Court, in the case at bar, to construe a statute providing for the liability of the interstate and foreign carrier to "any of its employees" to mean only to any of its employees for whom Congress has the constitutional power to make such a provision. In that case there were taxes within the legislative control, and taxes without the legislative control of the Virginia assembly; in this case there are employees within the legislative control and employees without the legislative control of Congress; in that case the statute provided for "all taxes;" in this case the statute provides for "any employees;" in that case, examining the statute "in the light of the Constitution," this Court declared that "however broad and general its language, it can not be interpreted as extending beyond those matters which it is within the constitutional power of the legislature to reach," and if it appears that there were taxes beyond the control of the legislature, that the statute should be read "as though it in terms excluded them from its operation;" I am unable to imagine any reason why, examining the statute in this case with the aid of the same light, the Court should not make the same declaration of its meaning. Moreover, it should be remembered that a circumstance leading in the same direction is present in the case at bar which was absent in that case, for, to repeat what has already been said, here the general words are used in a context which suggests, if it does not require, the less extended meaning.

It should be observed that the McCullough case was simply a case of construction. The Court made no judicial amendment of the

statute or exception from its provisions of any subject which came within them according to their proper meaning, ascertained with the aid of the light of the constitutional limits of the legislative power. Mr. Justice Brewer pointed out the distinction between the construction of the statute and its validity, saying: "The statute precedes the contract. Its scope and meaning must be determined before any question will arise as to the validity of the contract which it authorizes." Thus the case is distinguished from some others, much relied upon in the argument, which establish the proposition, that a single statutory provision is void if it is expressed in general words so used as to manifest clearly the intention to include within those words subjects beyond the constitutional power of the lawmaking body. The courts have no power to read into such a provision an exception for the purpose of saving that which is left from condemnation. A law which can not endure the test of the Constitution without judicial amendment must perish. [Cases cited.] But the rule derived from these cases is by no means decisive of the inquiry whether this statute must be construed as seeking to accomplish objects beyond the power of Congress. It can be made decisive only by begging the very question to be determined, and, in the words of Mr. Justice Brewer, confusing "the two entirely distinct matters of construction and validity."

* * * * * * *

The natural meaning of the words of the statute considered together, each word receiving significance from those with which it is allied, the respect which is due to Congress, the belief which I hold that it would not intentionally overstep the clearly defined limits of its authority, and the principles of construction heretofore acted upon by this Court, lead my mind to the settled conviction that the statute can be interpreted, and ought to be interpreted, as affording the remedy therein prescribed only to the employees of foreign, interstate, and territorial carriers, who are themselves engaged in some capacity in such commerce in some of its manifold aspects. If this meaning be attributed to the words of the law, it is apparent that in the opinion of a majority of the Court the law, in its main features at least, would be constitutional.

Entertaining these views of the meaning of the statute, I am compelled [to] go further and consider the other objections to it. I agree entirely with all that was said in the opinion of Mr. Justice White in support of the power of the Congress to enact a law of this general character, but, as I think that the judgments in these cases ought to be reversed, I can not escape dealing with specific objections to the statute which he has not deemed it necessary to discuss. I think it better, therefore, to deal with all the questions that are necessarily raised in these cases.

I come now to the question whether the statute, thus construed, is in the execution of any power conferred by the Constitution upon the Congress. It is apparent that there is no such power unless it be found in that clause of the Constitution which authorizes Congress "to regulate commerce with foreign nations and among the several States and with the Indian tribes." * * *

The different kinds of commerce described have the common qualities that they are more extensive than the jurisdiction of a single

State and liable to injury from conflicting State laws, and thereby are all alike distinguished from the purely internal commerce of the States. There is nothing in the words of the grant that permits the belief that the power is not coextensive over foreign, interstate, and Indian trade, or is anything less than the whole power which any government may properly exercise over either, though it may well be that the restrictive parts of the Constitution, its prohibitions and reservations, may operate differently on different kinds of commerce, or even on different aspects of the same kind of commerce.

It is said that Congress has never before enacted legislation of this nature for the government of interstate commerce on land, though it has for the government of such commerce upon the water and for the government of foreign commerce; that on the contrary the relations affected have been controlled by the undoubted power of the States to govern men and things within their respective dominions; and that this omission of Congress is of controlling significance. The fundamental fallacy of this argument is that it misunderstands the nature of the Constitution, undervalues its usefulness, and forgets that its unchanging provisions are adaptable to the infinite variety of the changing conditions of our national life. Surely there is no statute of limitations which bars Congress from the exercise of any of its granted powers, nor any authority, save that of the people whom it represents, which may with propriety challenge the wisdom of its choice of the time when remedies shall first be applied to what it deems wrong. It can not be doubted that the exercise of a power for the first time may be called upon to justify itself. The fact that it is for the first time is a circumstance to be considered. But in this case it is a circumstance whose significance disappears in the light of history. * * *

It was not reasonably to be expected that a phenomenon so contrary to the experience of mankind, so vast, so rapidly developing and changing, as the growth of land commerce among the States, would speedily be appreciated in all its aspects, or would at once call forth the exercise of all the unused power vested in Congress by the commerce clause of the Constitution. Such a phenomenon demands study and experience. The habit of our people, accentuated by our system of representative government, is not so much in legislation to anticipate problems as it is to deal with them after experience has shown them to exist. So Congress has exercised its power sparingly, step by step, and has acted only when experience seemed to it to require action. A description of its action in this respect was given In re Debs, 158 U. S. 504 [1895] * * *

Since this decision other laws more fully regulating interstate commerce on land have been enacted, which need not here be stated. They show a constantly increasing tendency to exercise more fully and vigorously the power conferred by the commerce clause. It is well to notice, however, that Congress has assumed the duty of promoting the safety of public travel by enacting the safety-appliance law; an act to require reports of casualties to employees or passengers (31 Stat. 1446); a resolution directing the Interstate Commerce Commission to investigate and report on the necessity for block signals (34 Stat. 838); an act limiting the hours of service of employees, and the act under consideration. These acts, all relating to interstate

transportation, demonstrate the belief of Congress that the safety of interstate travel is a matter of national concern, and its deliberate purpose to increase that safety by laws which it deems conducive to that end. I think, therefore, that we may consider whether this act finds authority in the commerce clause of the Constitution without embarrassment from any inferences which may be drawn from the inaction of Congress.

It is settled beyond the necessity of citing cases that the transportation of persons and property is commerce, in other words, that the business of carriers is commerce. Where, therefore, the business is foreign or interstate, Congress, it has frequently been decided, has the paramount, if not the sole, power to legislate for its direct control. An obstruction of such commerce by unlawful violence may be made punishable under the laws of the United States, suppressed by the armies of the United States, or, at the instance of the United States, enjoined in its courts. (In re Debs, ubi sup.) It is difficult to conceive how legislation may effectively control the business if it can not regulate the conduct of those engaged in the business, while engaged in the business, in every act which is performed in the conduct of the business. The business of transportation is not an abstraction. It is the labor of men employed with the aid of instrumentalities, animal and mechanical, in carrying men and things from place to place. In every form of transportation, from the simplest to the most complex, whether the man carries the burden on his back, or drives an animal which carries it, or a locomotive which draws a car which carries it, the one and only constant factor is the labor of mankind. I am quite unable to understand the contention made at the bar that the power of Congress is to regulate commerce among the States and not to regulate persons engaged in commerce among the States, for in the case of transportation at least the labor of those engaged in it is commerce itself. How poor and meager the power would be if, whenever it was exercised, the legislator must pause to consider whether the action proposed regulated commerce or merely regulated the conduct of persons engaged in commerce. The contention derives some plausibility from its vagueness. Of course the power to regulate commerce does not authorize Congress to control the general conduct of persons engaged therein, but, unless it is an idle and useless power, it authorizes Congress to control the conduct of persons engaged in commerce in respect to everything which directly concerns commerce, for that is commerce itself. It would seem, therefore, that when persons are employed in interstate or foreign commerce, as the employment is an essential part of that commerce, its terms and conditions, and the rights and duties which grow out of it, are under the control of Congress subject only to the limits on the exercise of that control prescribed in the Constitution. This has been the view always expressed or implied by this Court. In his concurring opinion in Gibbons *v.* Ogden, 9 Wheat. 1, Mr. Justice Johnson said, p. 229, "Commerce, in its simplest signification, means an exchange of goods, but in the advancement of society, labor, transportation, intelligence, care and various mediums of exchange become commodities and enter into commerce; the subject, the vehicle, the agent and their various operations become the objects of commercial regulations." * * *

The case of Pierce *v.* Van Dusen, 78 Fed. 693, was decided by the Court of Appeals of the Sixth Circuit by Mr. Justice Harlan and Judges Taft and Lurton. The opinion was delivered by Mr. Justice Harlan. After sustaining a State statute, which modified the common law rules with respect to the liability for injuries of a carrier to its employees, he said of it: "The Ohio statute is not applicable alone to railroad corporations of Ohio, engaged in the domestic commerce of this State. It is equally applicable to railroad corporations doing business in Ohio, and engaged in commerce among the States, although the statute, in its operation, may affect in some degree a subject over which Congress can exert full power. The States may do many things affecting commerce with foreign nations and among the several States until Congress covers the subject by national legislation. * * * Undoubtedly the whole subject of the liability of interstate railroad companies for the negligence of those in their service may be covered by national legislation enacted by Congress under its power to regulate commerce among the States."

We may not trust implicitly to the accuracy of statements gathered from opinions where the precise question was not for decision. But where, as in these quotations, the statements were an essential part of the course of reasoning deemed appropriate for the disposition of the cases, where the same thought clothed in different words has been expressed at intervals from early times to the present day, and where no decision or judicial utterance has been found in opposition to them, they are entitled to profound respect, and furnish cogent evidence of what the law has always been supposed to be by the members of this Court. They can not be regarded lightly, and if we follow them they lead us to the conclusion that the national power to regulate commerce is broad enough to regulate the employment, duties, obligations, liabilities, and conduct of all persons engaged in commerce with respect to all which is comprehended in that commerce. Upon what principle except this could this Court have twice enforced the safety-appliance act, undisturbed by a doubt of its constitutionality? (Johnson *v.* Railroad, 196 U. S. 1 [Bulletin No. 56, p. 303], Schlemmer *v.* Railroad, 205 U. S. 1 [Bulletin No. 71, p. 385].) That act (27 St. 531) compelled interstate railroads to equip all their trains with power brakes operated from the engine, and all their cars with automatic couplers, grab irons, and hand holds, by enacting that the use of engines and cars not thus equipped should be unlawful. There was no express provision that an employee injured by the failure of a railroad to comply with the law should be entitled to damages, but without doubt the liability of the railroad is implied. The common law rule governing the liability was materially changed by section 8, which abolished in part the doctrine of the assumption of risk, by providing that the employee should "not be deemed to have assumed the risk" of the unlawful conditions, though he knew of them and continued in his employment. This section was enforced in most emphatic matter [manner] in the Schlemmer case, where Mr. Justice Holmes said, "An early, if not the earliest, application of the phrase 'assumption of risk' was the establishment of the exception to the liability of a master for the negligence of the servant when the person injured was a fellow-servant of the injured man." If the statute now before us is beyond the constitutional power of Congress, surely the

safety-appliance act is also void, for there can be no distinction in principle between them. If Congress can create a liability to an injured employee for the existence of conditions in certain mechanisms which he uses, by declaring those conditions unlawful, it may create the same liability for negligence of the agents and imperfections in the instruments used in the carrier's work; if it may change the common law rule of the assumption of the risk of imperfect appliances, it may change the rule of the assumption of the risk of a careless fellow-servant. I can conceive of no principle of constitutional law which enables us to say that the commerce clause authorizes Congress to fix upon the carrier a liability for an insufficient brake but not for a defective rail, for the absence of automatic couplers, but not for the negligent order which brings trains into collision, for an insecure grab iron, but not for a heedless switchman. If Congress has the right to control the liability in any way it may control it in every way, subject, as all powers are subject, to the express prohibitions of the Constitution. Unless the cases on the safety-appliance acts are deemed to have been inadvertently decided, they seem to be conclusive of this branch of the case. This seems to have been feared by counsel for one of the defendants, who in his brief said "that the giving of a right of recovery to an injured employee is a proper and necessary method for making effective the safety-appliance act, * * * we do not admit."

But if we put aside the authority of precedents, and examine the nature and extent of the grant to Congress of power over commerce in the light of the settled principles of interpretation fit to be applied to the exposition of a constitution, we shall arrive at the same result. One main purpose and effect of the Constitution was to devise a scheme of efficient government. In order to accomplish this all the powers usually exercised by governments were distributed between the States and the Nation, except those deemed unfit or unsafe to be intrusted to either and withheld from both. In the allotment of powers to the nation they were enumerated rather than defined. In the enumeration words of the largest import were employed, comprehending within their meaning grand divisions of the powers of government. The nature of the Constitution, said Chief Justice Marshall, (McCulloch *v.* Maryland, 9 Wheat., p. 407,) "requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves." The wide extent of the powers granted to Congress is expressed in a few simply worded provisions, all of which might be printed on a single page of its book of annual laws. Counsel have argued that the power to regulate commerce does not include the power to regulate the conduct of persons engaged in that commerce in respect of that commerce. This is what Mr. Justice Miller (110 U. S., p. 658) described as "the old argument often heard, often repeated, and in this Court never assented to, that when a question of the power of Congress arises the advocate of the power must be able to place his finger on words which expressly grant it." Suppose that method of reasoning had been applied to the power "to establish post-offices and post-roads," under which Congress governs the postal system of the country as fully and freely in every detail as it is governed by any other nation. It could be said to Congress, you can not carry the mail, you can not issue money

orders, you can not determine what shall be excluded from the mail, you can not regulate the conduct of those who are employed in the mail service, you can not exempt them from militia duty, you can not punish their theft or embezzlement, you can not punish him who breaks and enters the post-office or mail car—all these powers are reserved to the States. You can only establish post-offices and post-roads, and when that is done your power is exhausted. Yet Congress has done all these things and no one now doubts its power to do them, because the grant of power is of the whole governmental power over the subject. So, too, the power to regulate interstate and foreign commerce is the whole power which any government can exercise over that subject, it "is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States." Marshall, C. J., in Gibbons *v.* Ogden, ub. sup., p. 197; The Lottery case, 188 U. S. 321. We are brought then directly to the inquiry whether a power so extensive is a sufficient warrant for the enactment of the statute before us.

By what has been called the auxiliary power Congress may "make all laws which shall be necessary and proper for carrying into execution" its granted powers. It is settled that this provision authorizes the enactment of laws which, in the exercise of a wide discretion, Congress deems adapted to secure a legitimate end and calculated to effect any of the objects intrusted to it, and the exercise of that discretion, unless it violates some prohibition of the Constitution or is used as a pretext to accomplish some object not intrusted to the National Government, can not be reviewed by the judicial branch of the Government without trespassing upon a domain which is peculiarly and exclusively the province of the legislative branch. If the statute under consideration be brought to the test of these principles there can be no doubt of its validity.

It can not be denied that in that part of commerce which consists in transportation, the safety of those who are concerned in it as passengers or employees is of the first importance. As was said by Mr. Justice Gray, in Chicago, etc., Railway Co. *v.* Solan, 169 U. S. 135, "the fundamental principle on which the law of common carriers was established was the securing of the utmost care and diligence in the performance of their public duties." The Government having the relations which the National Government has to interstate commerce, pronounced by the Court in the Debs case to be "those of direct supervision, control, and management," which neglects to do what it is fitting for a government to do to insure the safety of public travel, fails in the performance of its highest duty. * * *

It follows that if Congress, in the exercise of its plenary power over interstate and foreign transportation, deems that the safety of that transportation would be increased by enacting that those employed in it shall have a different remedy for injuries sustained by its negligent conduct than that furnished by the laws of the States, this Court can not, without overstepping the boundary which separates the judicial from the legislative field, declare the enactment void.

The power of Congress to enact the law under consideration, which seems so clearly to result from a just interpretation of the commerce

clause, might not have been disputed but for the fact that up to this time the subject has been left to be dealt with by the States. If a doubt ever existed that the States could lawfully deal with the subject under the general legislative authority to govern their territory, which was undisturbed by the Constitution, that doubt was dispelled by the decision in Sherlock *v.* Alling, ub. sup., and it is now agreed that the State may, in the absence of action by Congress, fix and determine the liability of all carriers while operating within the State, to those whom they employ for the injuries which are suffered in the course of the employment. But such authority in the State is not inconsistent with a like authority in the Nation. Where, as in the case of our dual government, the same territories and the same individuals are subject to two governments, each supreme within its sphere, both governments by virtue of distinct powers may legislate for the same ends. * * *

"If a State," said Chief Justice Marshall (in Gibbons *v.* Ogden, ubi sup., 204), "in passing laws on subjects acknowledged to be within its control, and, with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other, which remains with the State and may be executed by the same means. All experience shows that the same measure or measures, scarcely indistinguishable from each other, may flow from distinct powers; but this does not prove that the powers themselves are identical." That the States may by their laws fix the relative rights, duties, obligations, and liabilities of all persons or corporations within their territorial jurisdictions, and thus control in that respect those who are engaged in interstate and foreign commerce; that such laws do not proceed from any power to regulate such commerce, though incidentally and indirectly they do regulate it, but are to be referred to their general power over persons and things within their territories, and that all such laws, so far as they affect such commerce, must yield to the superior authority of the laws of Congress, is, I think, conclusively shown by the following cases: Sherlock *v.* Alling, 93 U. S. 99; Smith *v.* Alabama, 124 U. S. 465; [etc.].

There remains to be considered the objection that the specific provisions of the act exceed the legislative power over the subject. * * * The only limit upon the authority of Congress relevant to the discussion of this branch of the case is that which forbids Congress from depriving any person of his life, liberty, or property without due process of law. Amendment 6. It is contended that, although the law deals with a subject under the control of Congress, it deals with it in such a manner as to violate that prohibition, and is therefore void. Before considering the contention it is desirable to state clearly the substantial provisions of the act. The remedy afforded by it is more generous to the employee than that given by the common law in several respects. The common law recognized no recovery of damages for death resulting from negligence; by the statute damages are recoverable for death as well as for injury. The common law allowed no recovery against the employer for the neglect of a fellow-servant engaged in a common employment; by the statute the employer is held responsible for the negligence of any of its officers, agents, or employees, even though the guilty person is a fellow-servant of him

who is injured or killed. The common law denied to one who by his negligence had contributed to his own injury the right to a remedy for the neglect of another which had been a concurring cause; by the statute the negligent sufferer may recover if his negligence be slight, and that of the employer gross in comparison, though the contributing negligence must be taken into account in reduction of the damages. The common law, as adjudged by this Court, permitted the employee to enter into a contract renouncing his right to damages in case he incurred injuries in the course of his employment; the statute forbids such a contract. Thus four doctrines of the common law restrictive of the employees' rights are supplanted by others more favorable to him.

There can be no doubt of the right of a legislative body, having jurisdiction over the subject, to modify the first three of these rules of the common law in the manner in which this act of Congress does it. They are simply rules of law, unprotected by the Constitution from change, and like all other such rules must yield to the superior authority of a statute. They have so generally been modified by statute that it may well be doubted if they exist in their integrity in any jurisdiction. * * * Whenever the legislative power to change any of these rules of the common law has been drawn in question in this Court it has been sustained. * * *

But it is earnestly urged upon us that the statute under consideration, applying to all interstate common carriers and all their employees in that business, without distinguishing between that part of the business and employment which is dangerous and hazardous and that part which is not, and confined solely to the business of common carriage and its employers, is a deprivation of the employer's property without due process of law, in violation of the fifth amendment of the Constitution. The manner in which due process of law is said to be denied is by the denial of the equal protection of the laws by imposing unusual burdens upon a class of persons arbitrarily and capriciously selected. In support of this position cases from State courts interpreting State constitutions and cases from this Court interpreting the restriction upon State action imposed by the fourteenth amendment, are indiscriminately cited. They furnish little aid.

It is not necessary in this case to determine how far, if at all, the requirement from the States of the equal protection of the laws made by the fourteenth amendment is included in the requirement from the Nation of due process of law made by the fifth amendment to the Constitution. It is enough to say that this statute complies with both. It is rather startling to hear that in enacting laws applicable to common carriers alone Congress has made a capricious and arbitrary classification. From time immemorial the common law has set apart those engaged in that business as a peculiar class, to be governed in many respects by laws peculiar to themselves. In separating carriers from those engaged in other interstate and foreign commerce, Congress has but followed the ancient classification of the common law, based upon reasons so obvious that they need no statement. Whether the law should be made to apply to all carriers or to carriers by railroad alone, or whether the employees should be classified according to the degree of danger which surrounds their employment, is a matter

of legislative discretion with which we have no right to meddle. (See Union Pacific Railway Co. *v.* Mackey, ub. sup.)

I have confined my observations up to this point to the first three changes in the common law made by the statute. The fourth change, that forbidding the employee to make a contract releasing his employer from the consequences of his negligence, is open to a possible objection not common to the others. It is asserted that this part of the act violates the right of free contract which in some cases this Court has protected against the exercise of the legislative power. Without intimating any opinion on that subject, it is enough to say that that part of the statute is separable from and independent of the remainder, and may stand or fall by itself, and that no question concerning it is raised in these cases. I see nothing in the provision that "all questions of negligence or contributory negligence shall be for the jury" which affects the right of jury trial guaranteed by the seventh amendment. Such questions always have been for the jury, and I can not see that this enactment makes any change whatever.

I am of opinion, therefore, that the act should be sustained as a legitimate exercise of the authority of Congress, and that orders in these cases should be made accordingly.

Mr. Justice Harlan, (with whom concurred Mr. Justice McKenna,) dissenting.

Mr. Justice McKenna and myself are of opinion that it was within the power of Congress to prescribe, as between an interstate commerce carrier and its employees, the rule of liability established by the act of June 11, 1906. But we do not concur in the interpretation of that act as given in the opinion delivered by Mr. Justice White, but think that the act, reasonably and properly interpreted, applies, and should be interpreted as intended by Congress to apply, only to cases of interstate commerce and to employees who, at the time of the particular wrong or injury complained of, are engaged in such commerce, and not to domestic commerce or commerce completely internal to the State in which the wrong or injury occurred. We concur in the views expressed by Mr. Justice Moody as to the scope and interpretation of the act. We think the act is constitutional, and, therefore, that the judgment should be reversed.

Mr. Justice Holmes dissenting.

I must admit that I think there are strong reasons in favor of the interpretation of the statute adopted by a majority of the Court. But, as it is possible to read the words in such a way as to save the constitutionality of the act, I think they should be taken in that narrower sense. The phrase "every common carrier engaged in trade or commerce" may be construed to mean "while engaged in trade or commerce" without violence to the habits of English speech, and to govern all that follows. The statute then will regulate all common carriers while so engaged in the District of Columbia or in any Terri-

tory, thus covering the whole ground as to them; and it will regulate carriers elsewhere while engaged in commerce between the States, etc., thus limiting its scope where it is necessary to limit it. So construed I think the act valid in its main features under the Constitution of the United States. In view of the circumstances I do not discuss details.

EMPLOYMENT OF CHILDREN—AGE LIMIT—DANGEROUS EMPLOYMENTS—CONSTITUTIONALITY OF STATUTE—EFFECT ON EMPLOYERS' LIABILITY—*Lenahan v. Pittston Coal Mining Company, Supreme Court of Pennsylvania, 67 Atlantic Reporter, page 642.*—Margaret Lenahan sued in the court of common pleas of Luzerne County to recover damages for injuries received by a lad, Munley, aged 14 years and 4 months, employed, as alleged, as an oiler in a mine, in violation of law. The case was thrown out on a nonsuit, and on refusal to remove the same an appeal was taken to the supreme court of the State, which directed that the case be heard. The action was based on the statute which forbids the employment of children under 15 years of age as oilers in mines, and the ruling of the court turned on the validity and effect of this statute.

From the opinion of the court, which was delivered by Judge Elkin, and which upheld the statute, the following is quoted:

When this case again comes up for trial in the court below, much will depend upon the exact duties which the boy, Munley, was required to perform by the appellee company. If it was a part of his duties to oil the "scraper line," as is the contention of appellant, the negligence of the appellee would be established. If, on the other hand, as is asserted by appellee, it was no part of his duty to oil the "scraper line," the rule relied on by the court below would control the case.

At the trial the learned court below directed a compulsory nonsuit to be entered, which, on motion made, he refused to take off on the ground that the boy was guilty of contributory negligence in attempting to oil dangerous parts of the machinery while in motion, which was in violation of the statute, and therefore negligent. This would be the correct rule if the injured boy had the right under the law to engage in the employment which occasioned the injury. The learned trial judge took the view that the boy, being over 14 years of age, was presumed under the common-law rule to have sufficient capacity to be sensible of danger and to have the power to avoid it, and that such presumption had not been overcome by the evidence produced at the trial. The exact question raised by this appeal is whether this common-law rule was modified or changed by the statutory regulation. The injured boy was under 15 years of age, and, if the appellee company employed him for the purpose of oiling machinery, it did so in violation of the statute. Is it, therefore, in position to set up in this case the rule which presumes a boy over 14 to be capable of appreciating danger so as to apply the rule of contributory negligence to his acts, when the legislature in express terms provided that an employer shall not engage a person under the age of 15 years to perform

this dangerous work? After full consideration we are unanimously of the opinion that the legislature, under its police power, could fix an age limit below which boys should not be employed, and, when the age limit was so fixed, an employer who violates the act by engaging a boy under the statutory age does so at his own risk, and if the boy is injured while engaged in the performance of the prohibited duties for which he was employed, his employer will be liable in damages for injuries thus sustained. This rule is founded on the principle that when the legislature definitely established an age limit under which children should not be employed, as it had the power to do, the intention was to declare that a child so employed did not have the mature judgment, experience, and discretion necessary to engage in that dangerous kind of work. A boy employed in violation of the statute is not chargeable with contributory negligence or with having assumed the risks of employment in such occupation.

INJUNCTION—MODE OF MODIFICATION—VIOLATION—CONTEMPT—APPEAL—*Vilter Manufacturing Company v. Humphrey, Supreme Court of Wisconsin, 112 Northwestern Reporter, page 1095.*—The manufacturing company named had secured an injunction against an iron molders' union and certain individuals to prevent interference with the business of the company. It was charged that the union and other defendants had conspired to compel the company to grant demands as to piecework, the employment of nonunion men and apprentices, weekly payment of wages, etc. A strike had been instituted, and it was stated that picketing, persuasion, threats, and other means were used to compel the company to assent. The injunction restrained the defendants, among other things, "from interfering in any way with the plaintiff's business or property, from compelling, or attempting to compel, by threats or intimidation, fraud, persuasion, or violence, any of the plaintiff's employees from leaving its employ, or any other person from entering its employ, from congregating about the plaintiff's shop or picketing or guarding the streets for such purpose, from assaulting employees, or going to their homes to intimidate or coerce them, from persuading or inducing any person to join said conspiracy, and from doing any act tending or intended to compel the plaintiff against its will or the will of its officers to operate its factory or employ or discharge any workmen in any manner or upon any terms prescribed by any association or union, or to refrain against its will or the will of its officers from operating its said factory in any lawful manner."

The defendant, Humphrey, knew of the injunction, but engaged in such conduct as led to a charge of violation, and affidavits were made on which was based an order to show cause why he should not be punished for contempt. These affidavits set forth acts of abuse and violence, picketing and intimidation in furtherance of the alleged con-

spiracy, and in violation of the injunction. On hearing, however, the circuit court of Milwaukee County denied the motion to punish, holding that, on the evidence, no act of violation had been committed. From this the company appealed, and the order was reversed and the defendant was fined and assessed the costs of the proceedings.

The grounds of this reversal and a discussion of certain collateral questions are set forth in the appended opinion of Judge Winslow, who spoke for the supreme court:

It is very plain, by the terms of the order to show cause, that this is a proceeding seeking to punish a party to an action, under subdivision 3, sec. 3477, St. 1898, for disobedience of a lawful order of the court. Such a proceeding is brought for the primary purpose of protecting the rights of the opposite party, and is a civil proceeding. Where it is desired to punish an act as a criminal contempt, the proceeding should be brought in the name of the State, under section 2565 et seq., St. 1898. This was clearly pointed out in Emerson *v.* Huss, 127 Wis. 215, 106 N. W. 518. The latter proceeding is primarily for the purpose of vindicating the dignity of the court and enforcing respect for its authority. There are doubtless some acts which are civil as well as criminal contempts. The willful disobedience of an order of the court by a party to the action would seem to be such an act if the rights or remedies of the opposing party are injured or prejudiced thereby. (See subdivision 3, section 2565, and subdivision 3, section 3477, St. 1898.) In such case the form in which the proceeding is brought will necessarily determine its character. If the proceeding is brought and prosecuted in the name of the State, it should be held to be a criminal proceeding, under section 2565, supra. If, however, as in the present case, it be entitled in the civil action in which the alleged violated order was made and charges injury to the rights or remedies of the opposing party by reason of the violation, it is plainly a civil proceeding, under section 3477, supra, brought primarily in the interest of the aggrieved party. The proceeding before us was therefore a civil proceeding, and hence an appeal lies from the final order.

The appeal, however, brings before us only the question of fact, namely, whether it was proven that the respondent violated the injunctional order. We are not concerned with the much-debated question whether there may lawfully be peaceful picketing to carry out the purposes of a strike. The injunctional order in question was very broad and sweeping in its terms, and not only prohibited all picketing which should intimidate or obstruct plaintiff's employees, but also prohibited the doing of any act tending or intended to compel the plaintiff to operate its factory or employ or discharge workmen in the manner or upon the terms demanded by the union. The order in question may have been too broad, but it was within the jurisdiction of the commissioner, and, if erroneous, the remedy was by motion to modify its terms, not by disregarding them. The orders of a court having jurisdiction must be obeyed. If they can with impunity be disregarded, they should never be made. A court which makes such orders can give no good reason for its existence. It should be abolished. It is not a court in any true sense of the term.

The question whether the respondent disobeyed this sweeping injunctional order is not open to doubt under the respondent's own evidence. It is true that he denies that he at any time interfered with plaintiff's employees, or called them names, or endeavored to dissuade them from working for the plaintiff or to coerce them; but he admits that he continuously picketed the plaintiff's premises with other strikers from the time of the making of the injunctional order until the commencement of the contempt proceedings, and that this was done in pursuance of the strike, in furtherance of its purposes, and under the direction of the strike leaders. He further testified as follows: "A strike is carried on by me and those associated with me to compel the employers to take us and those associated with us back on the terms proposed by our committee, and that is what I have been working for right along, and every act I have done has been for that purpose. I understand every act done by the other members of the union and the strikers is done for that purpose. Q. And you understand, do you not, that, if you and those associated with you can prevent handy men and your union from going to work in the foundry, you win the strike, don't you? A. Yes, sir; that is what all of us were trying to do. All of us were engaged in that, and whatever any of us did, as far as I know, was done toward the accomplishment of that end." Here is a distinct and unmistakable admission that the picketing which he did was intended to compel the plaintiff to accede to the demands of the union and conduct its business in the manner which the union prescribed. This was precisely what the injunctional order commanded him not to do in practically so many words. Whether the order was not too sweeping in its terms we do not decide. The question is not before us. While it stood it was respondent's duty to obey it. If he thought it too broad he should have moved to modify it.

The fact of the respondent's violation of the injunctional order being undisputedly shown by his own evidence, it is evident that the court's finding that he had not violated the order is erroneous. We construe this finding to mean that the court believed the respondent's testimony to the effect that he had committed no act of violence or abuse, but had simply done peaceful picketing. We are unable to say that this conclusion is against the clear preponderance of the evidence, and hence we accept it as a fact. No actual money loss was shown as the result of the respondent's acts. Hence no indemnification should have been adjudged, but simply a fine under section 3490, St. 1898. In view of the conclusion of the trial court as to overt acts of violence or abuse, we think the fine should not be large, but should be fixed at what may be called practically a nominal sum, i. e., $10, together with the costs and expenses of the proceedings.

Order reversed, and proceeding remanded, with directions to enter an order adjudging the defendant guilty of contempt and imposing a fine in accordance with the statute and as in this opinion indicated.

PAYMENT OF WAGES—MONTHLY PAY DAY—CONSTITUTIONALITY OF STATUTE—*Toledo, St. Louis & Western Railroad Company v. Long, Supreme Court of Indiana, 82 Northeastern Reporter, page 757.*—This

case was before the supreme court of Indiana on appeal from the circuit court of Clinton County, in which Charles Long had secured judgment for wages, penalties, and attorney's fees against the railroad company. The action was based on sections 7056 and 7057, Burns' An. Stat. 1901, which provide that companies, corporations, and associations doing business in the State must pay the wages due their employees engaged in manual or mechanical labor at least once a month. The company's contention that these sections are violative of the Federal Constitution was upheld by the supreme court, and the judgment of the lower court reversed. The reasons therefor appear in the following extract from the opinion of the court, which was delivered by Judge Monks:

It will be observed that said sections, so far as they affect employers, only apply to "every company, corporation or association," and, so far as their employees are concerned, only apply to those "engaged in manual or mechanical labor for every company, corporation or association," but deny the right to such of their employees as are not "engaged in manual or mechanical labor." Employees of an individual, although engaged in manual or mechanical labor for such individual, are excluded from the benefit of said sections of the statute. They give the right to recover penalties and attorney's fees to a certain class of employees of companies, corporations, and associations, but deny such right to the same class of employees of an individual engaged in the same business under the same conditions. They impose new burdens on "every company, corporation and association" doing business in the State, while an individual engaged in like business under like circumstances and conditions is left without any such burden. This brings said sections within the rule declared in Bedford Quarries Co. *v.* Bough (168 Ind. —, 80 N. E. 529), and the cases there cited, and upon the authority of said case we hold that they are unconstitutional.

SUNDAY LABOR—BARBERS—VOLUNTARY SERVICE—*McCain v. State, Court of Appeals of Georgia, 58 Southeastern Reporter, page 550.*—Slaughter McCain was convicted of violating the Sunday law of Georgia and appealed. McCain was a barber, working in a shop during the week, but on Sundays he occupied a room at a clubhouse, where he shaved such members as requested his services, no compulsory charge being made, though the members paid twenty-five cents a shave. The court held that the law (Pen. Code 1895, sec. 422), making the pursuit of business or engagement in one's ordinary calling, "on the Lord's Day, works of necessity or charity only excepted," a misdemeanor, had been violated.

The conclusions of law are presented in the following syllabus, which was prepared by the court:

1. A barber who pursues the work of his ordinary calling on the Lord's Day by shaving the members of a club at a room in the club-

house, and receives compensation therefor, violates Pen. Code 1895, sec. 422.

2. The criminal character of such act is not affected by the fact that the compensation for said work is not compulsory, but voluntary; nor by the fact that the work is confined to members of the club.

3. The courts will judicially recognize that shaving by a barber is not a work of necessity permitted by the statute to be done on the Sabbath Day.

4. The verdict having been demanded by the undisputed evidence, the errors of law complained of were immaterial and harmless.

DECISIONS UNDER COMMON LAW.

BOYCOTT—CONSPIRACY—INJUNCTION—*Shine et al. v. Fox Brothers Manufacturing Company, United States Circuit Court of Appeals, Eighth Circuit, 156 Federal Reporter, page 357.*—This case was before the circuit court of appeals on appeal from the circuit court for the eastern district of Missouri, in which an injunction had been granted restraining one Shine and others, members of a labor organization, from interfering with the business of the company. The representatives of the union appealed, with the result that the order of the circuit court was affirmed.

The facts appear in the opinion, which was delivered by Judge Hook, and which is in the main as follows:

The action of the trial court was in view of the following facts: The complainant, the manufacturing company, is engaged in the manufacture of sash, doors, blinds, and other articles used in the construction of buildings. Its factory is located in St. Louis, Mo., and is what is known as an "open shop;" that is to say, the complainant did not discriminate between union and nonunion labor, but left that matter to the voluntary choice of its employees. So far as complainant was concerned, workmen of both classes could obtain employment there. In fact, however, its employees, numbering from 50 to 75, were nonunion. The rules of the union labor organizations did not permit their members to work in an open shop except in special cases and for specific purposes. There were 23 open-shop factories in St. Louis like complainant's, and their product, which was commonly called "trim," was about 80 per cent of the total amount used annually in the building operations in that city. The employees in these factories, about 1,000 in number, were nonunion, excepting perhaps 3 or 4. By far the greater proportion, probably upward of 90 per cent, of the carpenters engaged in the erection of buildings in St. Louis belonged to the union labor organizations. In this state of affairs, a representative of the national organization known as the "United Brotherhood of Carpenters and Joiners of America" came from New York to St. Louis for the purpose of organizing the open-shop factories in St. Louis into closed or union shops. He took charge of and directed the course of the defendants to accomplish that end. Although action was taken against some of the other open-shop factories, it is quite clear from the evidence

that complainant was selected for especial attention. There seemed to be in its case more persistent and concentrated efforts. The defendants did not go about it by approaching complainant's employees and persuading them to join the union labor organizations, but they endeavored to make it impossible for complainant to continue its business unless it would adjust the wages and hours of labor to the union scale and require its employees to join the unions or leave its service. The defendants did not seek the assent or cooperation of the nonunion employees. Their efforts were not solicited by those employees, nor did the complainant invite their intervention. The relations between complainant and its employees were mutually satisfactory. There was no strike, and no controversy about wages, hours, or other conditions of service. The defendants sought to accomplish their purpose in this way: Upon the arrival of the organizer, a committee known as the "trim committee" was appointed by the central governing body of the defendant organizations. The organizer was ex-officio a member of this committee. To them was committed the active duty of organizing the open shops. They caused to be printed circulars giving lists of the factories which were run as closed shops, and delivered them to contracting builders and architects of St. Louis, who would have to do with the preparation of plans and specifications and the construction of buildings. They also gave them to owners of property who were about to improve the same. They watched the records of building permits to learn as early as possible of projected building enterprises. The list of closed shops implied that all those not named in the list were, to use the expression employed, "unfair." The circulars contained a warning that union carpenters would not be permitted to work upon any building materials not the product of a closed shop. They kept track of the output of complainant's factory and where it was delivered for use in building. Some contractors who had been customers of complainant for many years were required to sign a contract which put an end to this patronage. Building operations in which the product was used were suspended by strikes of union workmen which were ordered by the defendants. In some instances the union carpenters did not desire to cease work, but they were required to do so by threats of discipline at the hands of the organizations, which meant fines and ultimate expulsion. In one instance, union workmen, upon a building in which complainant's product was used, were fined by their organizations for refusing to cease work at the direction of individual defendants, and the contractor who employed them, though not a member of any union, was also fined and required to pay a sum of money as a condition to his being allowed to continue work with the use of union labor. In most instances where obligations had been incurred by builders requiring them to use the product of complainant's factory, they were allowed to continue with union labor upon the condition that a contract be executed, wherein the builder agreed that in the future he would not use such material. The defendant organizations also had what is known as a "we don't patronize" list. This was applied to a brewing association which had allowed nonunion "trim" to be used in the construction of one of its buildings. When the brewing company learned that its product was being boycotted, it canceled its contract for the use of the non-

union product, and the organizer sent forth a statement that the concern was no longer unfair to union labor. It does not appear, however, that this method was employed against the complainant.

We are of the opinion that the combination and concert of action of the defendants and the character of the active measures taken against the complainant, its product and its customers, including the enforced signing of contracts by such customers putting an end to future business relations with the complainant, and the notices and warnings to those who might become customers in the future, make the case indistinguishable from that of Hopkins *v.* Oxley Stave Co., 83 Fed. 912, 28 C. C. A. 99.

The order of the circuit court is affirmed.

BOYCOTT — CONSPIRACY — "UNFAIR LISTS" — INJUNCTION — *Buck Stove and Range Company v. American Federation of Labor, et al., Supreme Court of the District of Columbia, 35 Washington Law Reporter, page 797.*—The Buck Stove & Range Company, a corporation organized under the laws of Missouri and having its principal place of business at St. Louis, made a complaint against the American Federation of Labor, its officers, and the remaining members of its council, and against Electrotype Molders' and Finishers' Union No. 17, having headquarters in Washington, and certain individuals comprising its officers and executive board. The bill of complaint states that the company has been engaged in the manufacture of stoves and ranges since 1846, doing an annual business of about one and a quarter million dollars, extending to nearly all States and Territories of the Union; that it employs on an average seven hundred and fifty workmen, of whom ten per cent are in the nickel department, the labor of whom is essential to the conduct of the business; that it maintains an "open shop," union men to the number of several hundred being satisfactorily employed; that the company is a member of the Stove Founders' National Defense Association, and as such is party to an agreement with the Iron Molders' Union of North America, which in turn has an agreement with the Metal Polishers', etc., International Union of North America, providing for the adjustment of grievances, and that for many years the company has faithfully kept and observed its agreement.

The bill then recites that the American Federation of Labor has a membership of more than two million persons, comprising one hundred and twenty national or international and twenty-seven thousand local unions, besides State federations, city central unions, etc., all of which have officials who act in concert with and in obedience to the directions of the American Federation of Labor, its executive officers and agents, and who are reached by the circulars and publications of the Federation, notably the monthly journal known as the

American Federationist. The custom of the Federation to appoint at its annual convention a committee on boycotts is set forth, with the statement that in twelve years, four hundred and eight boycotts have been approved of and declared. Quotations from the recommendations of the boycott committees, adopted by the conventions of 1905 and 1906, are made a part of the bill. In the earlier year it was said:

We must recognize the fact that a boycott means war, and to successfully carry out a war we must adopt the tactics that history has shown are most successful in war. The greatest master of war said that "war was the trade of a barbarian, and that the secret of success was to concentrate all your forces upon one point of the enemy, the weakest, if possible." In view of these facts, the committee recommends that the State federations and central bodies lay aside minor grievances and concentrate their efforts and energies upon the least number of unfair parties or places in their jurisdiction. One would be preferable. If every available means at the command of the State federations and central bodies were concentrated upon one such, and kept up until successful, the next on the list would be more easily brought to terms and within a reasonable time none opposed to fair wages, conditions or hours but would be brought to see error of their ways and submit to the inevitable. Under the present system, our efforts are largely wasted and our ammunition scattered. Let us reduce the boycotts to the lowest possible number and concentrate our efforts upon these, and we feel certain better results will be obtained.

And in 1906:

We believe that some measure must be adopted to find out if the national, international, and local unions, who are responsible for the boycotts, are doing their duty to bring about the desired results. Therefore, we recommend that the organizations that have firms on the "We Don't Patronize" list of the American Federation of Labor, beginning January 1, 1907, report every three months to the Executive Council of the American Federation of Labor what efforts they are making to render the boycott effective. Failure to report for six months shall be sufficient cause to remove such boycotts as are not reported on from the "We Don't Patronize" list.

The methods of deciding to boycott are detailed, both for this body and for the Metal Polishers, etc., International Union, which has its own organ and determines its own "unfair list" which is published therein. A strike by the members of this union in violation of their agreement is alleged, the purpose named being the reduction of the working hours from ten to nine per day, though the other departments ran ten hours, and though the polishers, buffers, and platers were paid by the piece. The history of the dispute is set forth in detail, showing the final action of both unions named in placing the company on the "unfair" or "we don't patronize" list, and in distributing and posting circulars containing the words "Do not purchase of said firm." The methods of the boycott, the consequent loss of business, and the abandonment of contracts are set forth, and a variety of cases instanced.

Affidavits were filed by the defendants, defining the technical use of the word "unfair;" setting forth conditions in the iron molding and metal polishing trades, and alleging the discharge of employees on the ground of their membership in the labor organizations.

The case was heard before Judge Gould, who granted the injunction, setting forth his reasons as shown in the following quotations from his opinion:

There appear two general questions upon this record: First, has the plaintiff shown the existence of an unlawful combination and conspiracy to destroy his business; and, second, does the testimony so connect the defendants, or any of them, with such combination and conspiracy as to make them amenable to the injunctive power of this court.

Upon the first proposition there is little room for argument or discussion. One of the counsel for defendant stated in argument: "The American Federation of Labor has refused intercourse with the plaintiff, business intercourse, such as comes from the purchase of stoves. It has persuaded its friends to refuse that intercourse. It says: 'Have nothing to do with this man or anything he makes as long as this condition of affairs exists.'" (Record, p. 235.) There is no attempt to deny that plaintiff's customers, even those under contract, have refused to continue business dealings with it under threat of being boycotted by the local organizations affiliated with the Federation. It does not become necessary in this case to discuss whether placing plaintiff's name on the "Unfair" list, or on the "We Don't Patronize" list in the Federationist, amounts to what is technically called a boycott, for the reason that the affidavits as to what has been actually done with reference to plaintiff's customers leaves no doubt as to what has been in fact accomplished. A boycott is defined in volume 8 of the Cyclopedia of Pleading and Practice, p. 639, as follows: "This term generally means the confederation, generally secret, by many persons whose intent is to injure another by preventing all persons from doing business with him through fear of incurring the displeasure, persecution, and vengeance of the conspirators." A better definition, to my mind, is that given by Taft, circuit judge, in Toledo, etc., Ry. *v.* Penn. Co., 54 Fed. 730, 19 L. R. A. 357: "A boycott is a combination of many to cause a loss to one person by coercing others, against their will, to withdraw from him their beneficial business intercourse, through threats that, unless those others do so, the many will cause serious loss to them." This definition was given in March, 1893, and it was of such combinations that the same judge said, in July, 1894, in deciding the case of Thomas *v.* Cincinnati, etc., Ry. Co., 62 Fed., at p. 819: "Boycotts, though unaccompanied by violence or intimidation, have been pronounced unlawful in every State of the United States where the question has arisen, unless in Minnesota; and they are held to be unlawful in England." Since this statement was made, boycotts have been held unlawful in Minnesota. Ertz *v.* Produce Exchange, 79 Minn. 140.

It is not surprising that there is so little difference of opinion among the courts upon the question involved. The conclusion reached is based upon an appreciation of the fundamental rights of free men in a free country. In his work on Trade Unions, page 12,

Sir W. Erle says: "Every person has a right under the law as between himself and his fellow-subjects to full freedom in disposing of his own labor or his own capital according to his will. It follows that every other person is subject to the correlative duty arising therefrom and is prohibited from any destruction of the fullest exercise of the right which can be made compatible with the exercise of similar rights by others." Defendants have the right, either individually or collectively, to sell their labor to whom they please, on such terms as they please, and to decline to buy plaintiff's stoves; they have also the right to decline to traffic with dealers who handle plaintiff's stoves. But Sailor Bros., for instance, have an equal right to buy plaintiff's stoves and plaintiff has an equal right to sell said stoves to Sailor Bros., and when defendants and those associated with them combine to interfere with or obstruct, without justifiable cause, the freedom of buying and selling which should exist between plaintiff and Sailor Bros. they infringe upon the rights of both and do an unlawful act. The same principle which is the basis of their trade freedom is also the basis of the freedom of plaintiff and Sailor Bros. to deal with each other untrammelled by the interference of defendants. Such interference is an unlawful invasion upon the rights of plaintiff. Just what constitutes "justifiable cause" for interference, as remarked by Chief Justice Field, in Vegelahn *v.* Guntner, 167 Mass. 92, remains in some respects undetermined. Defendants claim the motive of wishing to better their condition affords such legal justification; but this motive is too remote, as compared with their immediate motive, which is to show what punishment and disaster necessarily follows a defiance of their demands. As quoted with approval by the Supreme Court of Pennsylvania, in Purvis *v.* Brotherhood, 214 Pa. 348: "True, the defendants contend and testify that their purpose was to benefit their own members. This, doubtless, in a sense, is true, but the benefits sought were the remote purpose, which was to be secured through the more immediate purpose of coercing the plaintiffs into complying with their demands, or otherwise injuring them in their business, and the court can not, in this proceeding, look beyond the immediate injury to the remote results. Such is the doctrine laid down in Eddy on Combinations and quoted with approval in the case of Erdman *v.* Mitchell, 56 Atl. 327, as follows: 'The benefit of the members of the combination is so remote, as compared to the direct and immediate injury inflicted upon the nonunion workmen (in this case nonunion mill owners) that the law does not look beyond the immediate loss and damage to the innocent parties to the remote benefits that might result to the union.'"

In the case of Plant *v.* Woods, 176 Mass. 492, the court says: "The necessity that the plaintiffs (members of one union) should join this association (defendants' union) is not so great nor is its relation to the rights of the defendants as compared with the rights of the plaintiff to be free from molestation, such as to bring the acts of the defendants under the shelter of the principles of trade competition. Such acts are without justification and therefore are malicious and unlawful, and the conspiracy thus to force the plaintiffs was unlawful. Such conduct is intolerable, and is inconsistent with the spirit of our law."

In the case of Curren *v.* Galen, 152 N. Y. 33, it is said, "The social principle which justifies such organization is departed from when they are so extended in their operation as either to intend or to accomplish injury to others."

It is earnestly contended by defendants' counsel, however, that as each one of the defendants has the right to refuse to patronize the customers of plaintiff unless such customers will discontinue handling plaintiff's stoves, that, therefore, they may combine in their refusal; in other words, that there can not be an unlawful combination where each member thereof might do, individually, the thing contemplated, without responsibility to the law therefor. This contention has much of plausibility. It is undoubtedly difficult to formulate the legal basis of the proposition that what is lawful for one to do becomes unlawful when done in combination. It seems to evade accurate analysis. This feature is brought out in the dissenting opinion of Mr. Justice Holmes in Vegelahn *v.* Guntner, supra, although he adds: "It would be rash to say that some as yet unformulated truth may not be hidden under this proposition," and admits: "That whatever may be the law in the case of a single defendant, that when a plaintiff proves that several persons have combined and conspired to injure his business, and have done acts producing that effect, he shows temporal damage and a cause of action, unless the facts disclose or the defendants prove some ground of excuse or justification, and I take it to be settled, and rightly settled, that doing that damage by combined persuasion is actionable, as well as doing it by falsehood and force." But, however unsatisfactory may be the statement of the "as yet unformulated truth" hidden under the proposition, the proposition itself is too firmly ingrafted upon both the civil and criminal law to be ignored. Mr. Justice Harlan, in the case of Arthur *v.* Oakes, 25 L. R. A., at page 429, thus states it: "It is one thing for a simple individual or for several individuals each acting upon his own responsibility and not in cooperation with others, to form the purpose of inflicting actual injury upon the property or rights of others. It is quite a different thing in the eye of the law for many persons to combine or conspire together with the intent not simply of asserting their rights or of accomplishing lawful ends by peaceable methods, but of employing their united energies to injure others or the public. An intent on the part of a single person to injure the rights of others or of the public, is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting jointly, has always been recognized as in itself wrongful and illegal.

It was next contended on behalf of defendants that to restrain the publication of plaintiff's name on the "Unfair" or "We Don't Patronize" list would be an infringement on their constitutional rights and an assault upon the freedom of the press; or that if plaintiff had any redress for such publication it was by action for the libel, and that equity will not join the publication of a libel. All this would have merit, if the act of defendants in making such publication stood alone, unconnected with other conduct both preceding and following it. But it is not an isolated fact; according to the al-

legations of the bill and the supporting affidavits it is an act in a conspiracy to destroy plaintiff's business, an act which has a definite meaning and instruction to those associated with defendants and an act which is the basis for conduct on the part of defendant's associates, which unlawfully interferes with plaintiff's right of freedom to trade with whom he pleases. The argument of counsel is fully answered by the language of Mr. Justice Holmes in the case of Aikens *v.* Wisconsin, 195 U. S. 194: "No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected of acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law."

It is asserted in the answer of defendants, and urged in the argument, that the defendant, the American Federation of Labor, is a federation of organizations and has no individual membership. It would be difficult to understand how the different organizations, made up of individual members, and existing only by reason of such individual membership, could be federated into a central organization without such individual members becoming also members of such central organization; especially would this be difficult in a court of equity which looks through the forms to reach the substance. But if this could be accomplished as a legal or equitable fact, the testimony shows conclusively that the defendant has not done so. On page 177, of the printed affidavits, is given a facsimile from the report of the proceedings of the convention of the Federation, 1904, showing that it claimed to be then composed of more than 1,650,000, individual members. And on page 293, in the report of the defendant, Gompers, as president of said Federation, he refers to the activity of "all our organizers, our organizations, and our members."

It is further insisted by counsel for defendants that plaintiff's business is not property or a property right; that it is a mere abstraction, incapable of judicial protection.

In the case of My Maryland Lodge *v.* Adt, 100 Md. 238, a boycott case, Chief Judge McSherry, in delivering the unanimous opinion of the court, uses this language: "It is too late to doubt the jurisdiction of a court of equity to grant relief in such cases as this if the averments of the bill are sustained by the evidence. The adjudged cases are all one way." (Citing nine cases from the State and Federal courts.) "This list of cases might be swelled a hundredfold, but we do not deem it necessary to cite any others. Those that we have referred to are quite analogous to the one before us."

In the case of Purvis *v.* United Brotherhood, 214 Pa. 348, the court adopts this language: "The business of the plaintiffs is property within the meaning of the law. The defendants sought, by concerted action, to injure them in their business; in other words, their property, in order to coerce them into submission to the demands of the union."

In Gray *v.* Building Trades Council, 91 Minn. 171, the court uses this language: "In restraining boycotts the authorities proceed on the theory that they are unlawful interferences with property rights. * * * A person's occupation or calling, by means of which he earns a livelihood and endeavor[s] to better his condition,

and to provide for and support himself and those dependent upon him, is property within the meaning of the law, and entitled to protection as such; and as conducted by the merchant, by the capitalist, by the contractor or laborer, is, aside from the goods, chattels, money, or effects employed and used in connection therewith, property in every sense of the word."

As stated by Judge McSherry, the list of cases asserting this proposition might be extended indefinitely.

Second. The second point to be considered is, Does the testimony so connect the defendants, or any of them, with such combination and conspiracy as to make them amenable to the injunctive power of this court?

The record in this case leaves no doubt that plaintiff has been and still is the object of a "Boycott," using that in the most obnoxious sense, viz, an unlawful conspiracy to destroy its business; such a conspiracy as has received the condemnation of every Federal and State court in the country before which it has been brought for criminal action, legal redress, or equitable injunction. This conspiracy originated, as I have stated, in the action, by Metal Polishers' Local No. 13, in St. Louis, in the fall of 1906, a body federated with the defendant American Federation of Labor through the International Metal Polishers, etc., Union. It was advanced in accordance with the procedure of the said Federation until in March, 1907, it received the active indorsement of the executive council, the controlling body of said Federation. It is true that when this body acted it did not use the word "Boycott" but the more euphemistic terms of "Unfair" and "We Don't Patronize."

But an examination of the record convinces me that whatever the term used, the effect intended was what naturally happened, viz, a boycott. In fact, that the terms mean the same thing in the procedure of the Federation does not seem doubtful. Its constitution provides for a committee on boycotts to be appointed by the president at the annual convention; it was to such a committee on boycotts that the resolution of Bechtold was referred, and by that committee it was referred to the executive council. Over fifteen pages of the printed affidavits are filled with reports of the "organizers" of the Federation from all parts of the country, published in the Federationist.

These almost invariably contain the statement that "all American Federation of Labor boycotts are being pushed as thoroughly as possible." In the convention of the Federation held in November, 1906, a motion to concur in the report of a certain committee was carried; this report is as follows:

"At the twenty-fifth annual convention of the American Federation of Labor, held in Pittsburg, attention was called to the large number of firms on the unfair list and the necessity of reducing the same so that we could make our declarations of unfairness effective.

"This committee finds that not many changes have occurred during the past year and believe that some action must be taken in order to secure the cooperation of the labor press. We can't expect the labor press to give the space it would require to publish the names of all these firms, and without publicity the intent of the boycott is defeated.

"We believe that some measure must be adopted to find out if the national, international or local unions who are responsible for the boycott are doing their duty to bring about the desired results. Therefore we recommend that the organizations that have firms on the 'We Don't Patronize' list of the American Federation of Labor, beginning January 1, 1907, report every three months to the executive council of the American Federation of Labor what efforts they are making to render the boycott effective. Failure to report for six months shall be sufficient cause to remove such boycotts as are not reported on from the 'We Don't Patronize' list of the American Federation of Labor."

It will be noticed that here the terms "Unfair," "We Don't Patronize" and boycott are used interchangeably. In the affidavit of one of the defendants in this case, he speaks of the resolution introduced at the Minneapolis convention relative to a dispute "between one of the organizations affiliated with the American Federation of Labor" and plaintiff as follows: "This resolution sought the indorsement of the American Federation of Labor in the declaration of a boycott by that organization, the International Brotherhood of Foundry Employees."

It is well settled law that all who accede to a conspiracy after its formation and while it is in execution, and all who with a knowledge of the facts concur in the plans originally formed and aid in executing them are fellow-conspirators.

They commit an offense when they become parties to the transaction or further the original plan. (Ochs *v.* People, 124 Ill. 399.)

As stated by Judge Dillon, in U. S. *v.* Babcock, 24 Fed. 915: "Any one, who after a conspiracy is formed, and who knows of its existence, joins therein, becomes as much a party thereto from that time as if he had originally conspired." In the recent case of U. S. *v.* Standard Oil Co., 152 Fed. 294, the court uses this language:

"Again, the alleged conspiracy is one. Its scheme is single. It has but one object. Perhaps none of the alleged conspirators participates in every part of the conception and of the work of the combination, but every one of them takes his part in the plan, or in its execution, a part promotive of its purpose, the restraint and monopolization of commerce in the product of petroleum among the States. To the Waters-Pierce Company, the resident defendant, has been allotted no inconsiderable portion of the execution of this plan. * * * One who knows of a conspiracy after it is formed, and then joins it, or knowingly aids in the execution of its scheme, and shares in its profits, becomes from that time as much a coconspirator as if he was one of those who originally designed it and put it in operation. * * * 'If a series of acts are to be performed with a view to produce a particular result, he who aids in the performance of these acts in order to bring about the result must have an intention to effectuate the end proposed, and if he cooperate with others, knowing them to have the same design, there is in fact an agreement between him and them.'"

Upon the record as presented, and for the reasons stated, I am of the opinion that the plaintiff is entitled to be protected by an injunction until the final hearing of the case, and I will sign an order restraining the defendant substantially as prayed in the bill.

The injunction is in part as follows:

It is ordered that the defendants, The American Federation of Labor [and persons named], their and each of their agents, servants, attorneys, confederates, and any and all persons acting in aid of or in conjunction with them or any of them be, and they hereby are, restrained and enjoined until the final decree in said cause from conspiring, agreeing or combining in any manner to restrain, obstruct or destroy the business of the complainant, or to prevent the complainant from carrying on the same without interference from them or any of them, and from interfering in any manner with the sale of the product of the complainant's factory or business by defendants, or by any other person, firm or corporation, and from declaring or threatening any boycott against the complainant, or its business, or the product of its factory, or against any person, firm or corporation engaged in handling or selling the said product, and from abetting, aiding or assisting in any such boycott, and from printing, issuing, publishing, or distributing through the mails, or in any other manner any copies or copy of the American Federationist, or any other printed or written newspaper, magazine, circular, letter or other document or instrument whatsoever, which shall contain or in any manner refer to the name of the complainant, its business or its product in the "We Don't Patronize," or the "Unfair" list of the defendants, or any of them, their agents, servants, attorneys, confederates, or other person or persons acting in aid of or in conjunction with them or which contains any reference to the complainant, its business or product in connection with the term "Unfair" or with the "We Don't Patronize" list, or with any other phrase, word or words of similar import, and from publishing or otherwise circulating, whether in writing or orally, any statement, or notice, of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be "Unfair," or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public, or any representation or statement of like effect or import, for the purpose of, or tending to, any injury to or interference with the complainant's business, or with the free and unrestricted sale of its product, or of coercing or inducing any dealer, person, firm, or corporation, or the public, not to purchase, use, buy, trade in, deal in, or have in possession stoves, ranges, heating apparatus, or other product of the complainant, and from threatening or intimidating any person or persons whomsoever from buying, selling, or otherwise dealing in the complainant's product, either directly, or through orders, directions or suggestions to committees, associations, officers, agents or others, for the performance of any such acts or threats as hereinabove specified, and from in any manner whatsoever impeding, obstructing, interfering with or restraining the complainant's business, trade or commerce, whether in the State of Missouri, or in other States and Territories of the United States, or elsewhere wheresoever, and from soliciting, directing, aiding, assisting or abetting any person or persons, company or corporation to do or cause to be done any of the acts or things aforesaid.

EMPLOYERS' LIABILITY—VICE-PRINCIPALS—CHARACTER OF ACT AS TEST—*Peters v. George, United States Circuit Court of Appeals, 154 Federal Reporter, page 634.*—Elias George, a Syrian, had been awarded damages in the circuit court of the United States for the eastern district of Pennsylvania, for injuries received while at work in a quarry, and the quarry owners appealed. George was a general laborer, not experienced in the matter of drilling or blasting, and had been directed by one Blose to drill out an unexploded charge. Blose acted as sort of a head quarryman or gang boss, under the general direction of the superintendent. George was not warned as to the dangerous character of the work, and only the most elementary directions as to how to proceed were given.

The judgment of the lower court was affirmed, principally on grounds which appear in the following quotation from the opinion of the circuit court of appeals, as delivered by Judge Gray:

We are dealing now with what must be conceded to be a primary and absolute duty of the master to the servant, the liability for the nonperformance of which the master can not relieve himself by delegating it to any other person, whether of the highest or lowest rank in the service. Much argumentation has been devoted by counsel on both sides to the question whether David Blose was to be considered as a vice-principal of the defendants, or merely a fellow-servant of the plaintiff, the consequence on the one hand being that defendants would be responsible for injuries occasioned by his negligence, while on the other, it would be merely the negligence of a fellow-servant, and one of the risks assumed by plaintiff in entering defendants' employment. While at one time the so-called theory of vice-principal was much resorted to, in working out the liability of a master for injuries to an employee incurred in his service, it has, subsequently to the decision of the Ross Case, 112 U. S. 377, 5 Sup. Ct. 184, 28 L. Ed. 787, been largely discarded, at least in the Federal courts, and the distinction between negligence that is to be imputed to the master, and that which is to be considered as merely and solely the negligence of a fellow-servant, has been placed upon a more satisfactory and rational basis. In the opinion of Mr. Justice Brewer, delivering the judgment of the Supreme Court in B. & O. R. R. Co. *v.* Baugh, 149 U. S. 368, 13 Sup. Ct. 914, 37 L. Ed. 772, the whole subject has been instructively discussed, and it has been clearly and logically settled upon what grounds a master may be held liable for injuries incurred by a servant in the course of his employment. The question is always, whether the negligence charged is the neglect of a primary and absolute duty of the master to the servant. If such be its character, no delegation of the performance of that duty to another, no matter how inferior his rank may be in the master's service, can, as we have already said, relieve the liability of the master for its neglect. The master does not insure the safety of the servant, but he does undertake that the place in which he works, and the appliances with which he works, and the conditions under which he works, shall be reasonably safeguarded. A dereliction of the humblest employee in the master's service, to whom any part of such duty has been dele-

gated, is the dereliction of the master. Nothing short of actual notice of the danger to the workman who is to encounter it, with such cautionary explanation as may enable him to avoid it, will satisfy the requirement of the law, and the default of the intermediary, whether he be the highest officer in control, or merely a fellow-workman of the one exposed to the danger, is the default of the master. In such a case, all question as to whether the immediate cause of the injury was the negligence of a fellow-servant, is eliminated, and inquiry as to the extent of the control and authority committed by the master to the culpable agent, beside the issue, which is solely as to the character of the act or omission, and not the rank, of the offending servant.

INJUNCTIONS—PUBLICATIONS INCITING VIOLATIONS—*National Telephone Company of West Virginia v. Kent, United States Circuit Court, Northern District of West Virginia, 156 Federal Reporter, page 173.*—The telephone company above named had secured a preliminary injunction restraining Kent and other defendants, electrical workers and members of a labor union, from interfering with the conduct of its business. Subsequently an amended bill was filed, containing the complaints of injury and violence set forth in the original bill, and incorporating new matter relative to the action of one Hilton, editor and proprietor of a newspaper in the city of Wheeling, and the acts of certain persons, members of the Ohio Valley Trades and Labor Assembly, and alleging that these parties had joined the conspiracy presented in the original bill, and asking an injunction against them also. A preliminary injunction was granted on this bill, to which the defendants named demurred.

On hearing before Judge Dayton, the demurrer was overruled. From his opinion the following is quoted as setting forth the grounds on which the injunction was continued:

It is alleged in the amended bill that these new defendants, Hilton, Hecker, Corcoran, and Wessel, the three last mentioned acting in their capacity as officers of the Ohio Valley Trades and Labor Assembly, did subsequently to the granting of the preliminary injunction, granted upon the prayer of the original bill, join the conspiracy alleged in the original bill, and that they did, in pursuance of the said conspiracy, print and distribute a boycott circular, which appears among the exhibits to the amended bill, and that the defendant Hilton published in his paper certain matters intended to explain the carefully worded circular and to make the boycott inaugurated effective.

Counsel for the defendants, in the very able arguments presented, have very aptly said that this is an age of combinations. It is an age of combinations—combinations of capital and combinations of labor. These combinations, so long as they are kept within the bounds of the law, are certainly lawful, are in many instances beneficial to the persons interested, and may be, in some cases, of benefit to the general public; but when a combination of capital is made for unlawful pur-

poses, or, being made for an avowed lawful purpose, seeks to accomplish its purpose by unlawful methods, it becomes the duty of the courts to restrain the unlawful practices and to punish the unlawful acts. Likewise, when a combination of labor is made for unlawful purposes, or, being made for an avowed lawful purpose, seeks to accomplish its purpose by unlawful methods, it becomes the duty of the courts to restrain the unlawful practices and to punish the unlawful acts. The law knows no distinction between the rich and the poor, recognizes no distinction between unlawful acts of combinations of capital and unlawful acts of combinations of labor. The same principles applying to one must apply to the other, and when a combination of laborers is organized for unlawful purposes, or, being organized for lawful purpose, employs unlawful methods, it will be suppressed by the courts, its unlawful acts restrained, and its crimes punished as promptly and as effectively as like combinations of capital are suppressed, restrained, and punished.

There is further involved here, after considering the rights of the complainant company and the rights of the defendants, the rights of those citizens who desire to exercise their God-given right to earn their bread by the sweat of their brow in the employment of this telephone company. It is charged that the defendants threatened, abused, pursued, and even assaulted these men, who were doing no wrong, but were merely exercising their right to work upon terms satisfactory to them; yet they were made to suffer the persecution of these defendants, and their rights, as it is charged, were denied them. There is to be considered also the rights of the general public. It appears from the bill that this company and another company are engaged in the interstate commerce of carrying messages between the States, and that the conspiracy and combination complained of sought to interfere with and tie up this interstate commerce. This being a public business by a "quasi" public corporation, the rights of the public are involved and are not to be interfered with by any unlawful methods.

It is urged by counsel for the defendants that the injunction interferes with the rights of the press. The injunction granted does not deprive the newspaper in question of any lawful right to publish the truth or express its opinions in a lawful manner, but no newspaper has the right to publish any matter intended to aid wrongdoers in accomplishing a wrongful purpose or doing unlawful things, or to aid unlawful combinations in making effective an unlawful conspiracy. Some newspapers, certainly the one involved in this case, have misconstrued the freedom of the press until they seem to interpret the right to be a license to publish what may please them, even though the publication should be an express violation of the law. There is no intention on the part of the court to interfere with the freedom of the press, but this court is not ready to accept the theory that the freedom of the press means a right to advocate crime or to encourage the violation of the law.

The laborers in the organization, appearing as defendants in this case, have the right to organize for lawful purposes and to proceed to accomplish their purposes by lawful methods; but when they resort to force, violence, and destruction of property, coercion of peaceable citizens, combinations, and conspiracies to injure property and interfere with business by threats, menaces, and boycotts, as has been

charged in this case, they lose the moral support of the public and bring upon themselves the condemnation and restraining as well as the punishing power of the court. They approve the application of these principles to combinations of capital, and they can not be heard to complain of the application of the same principles to their own combinations, when they step beyond the bounds of the law.

Applying these principles to this case, and considering the bill as being uncontradicted, I have no hesitation whatever in promptly overruling the demurrer, and an order to that effect may be now entered.

LABOR ORGANIZATIONS—APPLICATION FOR MEMBERSHIP—QUALIFICATIONS—PROTECTION BY UNION—*Levin v. Cosgrove et al., Supreme Court of New Jersey, 67 Atlantic Reporter, page 1070.*—Louis Levin applied for membership in a labor union of painters, decorators, and paperhangers, stating that accompanying his application was the required fee of twenty-five dollars. This fee was in fact paid in installments, and on his rejection on grounds of incompetency, he sued for the return of this fee. The district court of Elizabeth gave judgment against Levin, who appealed, securing a reversal of the ruling of the court below, and orders for a new trial. The following syllabus by the court sets forth with sufficient fullness both the facts involved and the conclusions of law in the case:

1. The constitution of the Brotherhood of Painters, providing that the initiation fee paid by an applicant for membership must accompany the application and be returned in case the applicant is rejected, with a proviso that, if the fee is paid in installments while the applicant is "working at the trade and receiving the protection of the brotherhood," such payments shall be forfeited to the brotherhood if the applicant has made any false statements or is unable to qualify as a member, and there being evidence tending to show a custom of the brotherhood not to permit its members to work with men who were not members.

Held, that evidence that an applicant, pending his application, worked at the trade together with members of the brotherhood, did not show that plaintiff was "receiving the protection of the brotherhood," within the meaning of the constitution.

2. Plaintiff's right to seek and gain employment in his lawful occupation was a right secured to him by the constitution of this State. The fact of the brotherhood, having no right to interfere with him, did not interfere, can not be construed as "protection" extended by the brotherhood to him; nor was it in a legal sense a benefit to him.

3. An applicant for membership in a trade union stated in his application that he was able to command the average wages in his locality. *Held*, not to amount to a representation with respect to an existing state of facts, except that it was equivalent to an assertion that he believed himself able to command the average wages; and that, in order to forfeit money paid by the applicant on the ground of the falsity of this statement, it was necessary to show that he did not reasonably believe that he was able to command the average wages.

LABOR ORGANIZATIONS — TRADE AGREEMENTS — ENFORCEMENT — STRIKES—INJUNCTIONS—*A. R. Barnes & Company v. Berry, United States Circuit Court, Southern District of Ohio, Western Division, 156 Federal Reporter, page 72.*—A. R. Barnes & Co. and others, representing an employers' association known as the United Typothetæ of America, sued for an injunction against Berry and his codefendants, officers of the International Printing Pressmen and Assistants' Union of America, to prevent the violation by the latter of a contract entered into by the two associations named in January, 1907. It appeared that agreements had been made for a number of years past, but that at the convention of the pressmen and assistants in 1907, considerable dissatisfaction was expressed with the failure to secure the recognition of the closed shop and the immediate adoption of the eight-hour day. These matters had been discussed by the committees of the respective bodies, but the only agreement reached was in the nature of a compromise which looked to the adoption of the eight-hour day in January, 1909, otherwise continuing the contract of previous years. Berry and his associates, elected to office subsequent to the making of this agreement, were alleged in the bill to have demanded an immediate modification in respect of the matter of the closed shop and the time of adopting the eight-hour day, and, in order to enforce the demand, to have incited strikes against members of the Typothetæ who would not accede to the modifications, and to have threatened to pursue the same policy in the future.

Having stated these facts, Judge Thompson, speaking for the court, proceeded as follows:

The "closed shop" is contrary to public policy, and the demand for the immediate adoption of the "eight-hour day" is violative of the contract. Now, this is the situation as I see it. This contract was made. The old officers were succeeded by new ones, who were dissatisfied with it. They insisted upon a modification of it which would recognize the "closed shop" and adopt at once the "eight-hour day." The Typothetæ stood upon its contract rights and refused to make this concession, refused to change and modify the contract made, and it is alleged in the bill that in consequence thereof strikes have been declared against certain members of the Typothetæ in different parts of the country, and that strikes are threatened as against all members of the Typothetæ who may refuse to accede or consent to the modification of the contract as demanded. Practically the union is insisting upon a new contract.

The service of the employees, members of the union, is neither special, extraordinary, nor unique, in the sense that it could not otherwise be supplied, and that its loss would cause irreparable injury, and it is not sought to restrain them from quitting the service of their employers, but only that their officers, agents, and representatives be restrained from inciting them to strike, unless the contract be so modified as to make provision for the "eight-hour day" and "closed shop," and to make it effective at once. It is not a question, there-

fore, of whether the men who work shall be enjoined from striking, but it is a question whether the officers, agents, and representatives of these men, who represent the organization and control it, shall be permitted to incite the men to strike, to induce them to strike, and thereby repudiate the contract which was made by them through their agents at the January convention of 1907. The bill charges that the executive officers and directors have conspired to force the making of a new contract which will embody these two demands, and, in the event of the refusal of the Typothetæ to agree thereto, then to enforce these demands by strikes, and that they are using their position, power, and authority to control and induce the men to strike. That, in substance, is the allegation of the bill.

The court is not asked to make an order enjoining the men from striking, and, if it were asked, would refuse to grant it, because, as already stated, no case is made, nor can be made, in which the court would compel the men to labor. They can not be made slaves. They can not be compelled to work, and it is not sought by this bill to compel them to work; but it is sought to prevent the officers of the organization from using their power and influence to induce the men to strike in violation of their contract.

It is plain that these officers have great influence and power with the body of men composing this association, and if they exercise it unlawfully—exercise it for the purpose of repudiating the contract—they may be restrained from exercising such power and influence, although the men themselves can not be restrained from striking, or from walking out, at any time, and refusing to work. In a word, the proposition dealt with is this: May the officers of this organization, in violation of this contract, induce, influence, incite, or coerce the men into resorting to a strike to compel a modification of the contract? Shall they be permitted to do that?

I am compelled to dispose of this case upon what appears in the bill and the accompanying affidavits. There is no answer, and no affidavits on behalf of the defendants, except the ones I have read. I am now disposing of the application practically upon what is shown by this bill. It is shown by the bill that, being advised of this contract, they advised the men to repudiate it, to demand that the "eight-hour day" be made operative at once, and also the "closed shop," and to enforce the demand they threatened strikes, and it is alleged that strikes have been entered upon in Chicago, and other places throughout the country, and that a strike will be instituted against every member of the Typothetæ unless it consents to this modification of the contract.

Now, so far as the men are concerned, if they take it into their own hands, they may walk out, but this court is asked to stay the hands of the officers who manage and control this organization, who have power to influence, to incite, to put on foot these strikes, who have all the machinery in their hands, and who seek to use it to induce and incite these men to violate a contract that was fairly made.

I am of the opinion, therefore, that a case is made requiring that these officers, named, be enjoined, in the respects prayed in the bill, from exercising their power, their control, and their influence to induce strikes for that purpose.

LAWS OF VARIOUS STATES RELATING TO LABOR, ENACTED SINCE JANUARY 1, 1904.

[The Tenth Special Report of this Bureau contains all laws of the various States and Territories and of the United States relating to labor, in force January 1, 1904. Later enactments are reproduced in successive issues of the Bulletin, beginning with Bulletin No. 57, the issue of March, 1905. A cumulative index of these later enactments is to be found on page 283 et seq. of this issue.]

HAWAII.

ACTS OF 1907.

ACT No. 11.—*Hours of labor of employees on public works.*

SECTION 1. Section 122 of the Revised Laws of Hawaii is hereby amended so as to read as follows:

"Section 122. Eight hours of actual service on any working-day, except on Saturday, on which day only five hours of actual service shall constitute a day's labor for all mechanics, laborers, clerks and other employees employed upon any public work or in any public office of this Territory, or any political subdivision thereof, whether the work is done by contract or otherwise."

Approved over governor's veto.

ACT No. 96.—*Employment offices.*

SECTION 1. Chapter 102 of the Revised Laws of Hawaii is hereby amended by adding ten sections thereto to be known as section * * * 1418C, * * * and to read as follows:

* * * * * * *

"Section 1418C. Every person, firm or corporation conducting an employment or intelligence office or advertising as an employment or intelligence agent shall pay an annual license fee of twenty-five dollars.

* * * * * * *

Approved this 23d day of April, A. D. 1907.

ACT No. 98.—*Rates of wages of employees on public works.*

SECTION 1. From and after the passage of this act, the daily pay for each working-day of each laborer engaged in constructing or repairing roads, bridges or streets, waterworks or other works either by contract or otherwise, for the Territory of Hawaii, or for any political subdivision thereof, shall not be less than one dollar and twenty-five cents.

Approved over governor's veto.

ACT No. 113.—*Actions for personal injuries—Limitations.*

SECTION 1. Actions for the recovery of compensation for damage or injury to persons or property must be instituted within one year next after the cause of action accrued, and not after: *Provided*, That actions, on such causes, which accrued prior to the approval of this act, if otherwise barred hereby, may be brought within one year after such approval and not later.

Approved this 30th day of April, A. D. 1907.

ACT No. 119.—*Employment of minors in saloons—Sale of liquor to employees.*

SECTION 30. Licenses shall be subject to the following conditions and provisions:

* * * * * * *

(4) That no holder of a license for a saloon business shall employ any minor in or about the room or place where intoxicating liquors are furnished or sold;

(5) That no intoxicating liquor shall be sold or furnished to * * * any person whose * * * employer shall have given notice as hereinafter provided, forbidding the sale of such liquor to such person;

* * * * * * *

Approved this 30th day of April, A. D. 1907.

ILLINOIS.

ACTS OF 1907.

Accidents to employees—Reports.

(Page 308.)

SECTION 1. It shall be the duty of every person, firm or corporation employing laborers, artisans, mechanics, miners, clerks or any other servants or employees of any character, to make a report to the State bureau of labor statistics of every serious injury entailing a loss of thirty or more days' time, injury or death of every employee caused by accident while in the performance of any duty or service for such employer within thirty (30) days from the date of such injury or death. Such report shall give the name of the employer, character of business of such employer, where located, date of injury or death, name of person killed or injured, character of employment of service, and cause of such injury or death, and when injury alone, then the character and extent of such injury, residence, nativity and age of the person injured or killed, whether married or single, and, if known, how many persons are dependent upon such employee.

SEC. 2. It shall be the duty of the State bureau of labor statistics to cause such reports to be made and to enforce the provisions of this act and shall cause all of such accidents or deaths by accidents to be classified into trades or kinds of employment, and shall cause the same to be published at least once each year on or before January 1st.

SEC. 3. Any person, firm or corporation failing or refusing to make the reports as provided in section 1 of this act shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined in a sum not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00).

Approved May 24, 1907.

Inspection of factories—Butterine and ice cream factories.

(Page 309.)

(See Bulletin No. 73, pp. 834, 835.)

Department of factory inspection.

(Page 310.)

(See Bulletin No. 73, pp. 835, 836.)

Protection of employees on buildings.

(Page 312.)

SECTION 1. All scaffolds, hoists, cranes, stays, ladders, supports or other mechanical contrivances, erected or constructed by any person, firm or corporation in this State for the use in the erection, repairing, alteration, removal or painting of any house, building, bridge, viaduct or other structure, shall be erected and constructed in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated as to give proper and adequate protection to the life and limb of any person or persons employed or engaged thereon, or passing under or by the same, and in such manner as to prevent the falling of any material that may be used or deposited thereon.

Scaffolding, or staging, swung or suspended from an overhead support more than twenty (20) feet from the ground or floor shall have, where practicable, a safety rail properly bolted, secured and braced, rising a [at] least thirty-four (34) inches above the floor or main portion of such scaffolding or staging,

and extending along the entire length of the outside and ends thereof, and properly attached thereto, and such scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure.

SEC. 2. If in any house, building or structure in process of erection or construction in this State (except a private house, used exclusively as a private residence), the distance between the inclosing walls is more than twenty-four (24) feet, in the clear, there shall be built, kept and maintained, proper intermediate supports for the joists, which supports shall be either brick walls or iron or steel columns, beams, trussels [trusses] or girders, and the floors in all such houses, buildings or structures, in process of erection and construction shall be designed and constructed in such manner as to be capable of bearing in all their parts, in addition to the weight of the floor construction, partitions and permanent fixtures and mechanisms that may be set upon the same, a live load of fifty (50) pounds for every square foot of surface in such floors, and it is hereby made the duty of the owner, lessee, builder or contractor or subcontractor of such house, building or structure, or the superintendent or agent of either, to see that all the provisions of this section are complied with.

SEC. 3. It shall be the duty of the owner of every house, building or structure (except a private house, used exclusively as a private residence) now under construction, or hereafter to be constructed, to affix and display conspicuously, on each floor of such building, during construction, a placard, stating the load per square floor [foot] of floor surface, which may with safety be applied to that particular floor during such construction; or if the strength of different parts of any floor varies, then there shall be such placards for each varying part of such floor. It shall be unlawful to load any such floors, or any part thereof, to a greater extent than the load indicated on such placards, and all such placards shall be verified and approved by the State factory inspector, a deputy factory inspector, or by the local commissioner or inspector of buildings or other proper authority, in the city, town or village charged with the enforcement of building laws.

SEC. 4. Whenever it shall come to the notice of the State factory inspector or the local authority in any city, town or village in this State, charged with the duty of enforcing the building laws, that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, ladders, irons or ropes of any swinging or stationary scaffolding, platform or other similar device used in the construction, alteration, repairing, removing, cleaning or painting of buildings, bridges or viaducts within this State are unsafe, or liable to prove dangerous to the life or limb of any person, the State factory inspector, or such local authority or authorities, shall immediately cause an inspection to be made of such scaffolding, platform or device, or the slings, hangers, blocks, pulleys, stays, braces, ladders, iron or other parts connected therewith. If, after examination, such scaffolding, platform or device or any of such parts is found to be dangerous to the life or limb of any person, the State factory inspector or such local authority shall at once notify the person responsible for its erection or maintenance of such fact, and warn him against the use, maintenance or operation thereof, and prohibit the use thereof, and require the same to be altered and reconstructed so as to avoid such danger. Such notice may be served personally upon the person responsible for its erection or maintenance, or by conspicuously affixing it to the scaffolding, platform or other such device, or the part thereof declared to be unsafe. After such notice has been so served or affixed, the person responsible therefor shall cease using and immediately remove such scaffolding, platform or other device or part thereof and alter or strengthen it in such manner as to render it safe.

The State factory inspector or any of his deputies, or such local authority, whose duty it is, under the terms of this act, to examine or test any scaffolding, platform or other similar device, or part thereof, required to be erected and maintained by this section, shall have free access at all reasonable hours to any building or structure or premises containing such scaffolding, platform or other similar device, or parts thereof, or where they may be in use. All swinging and stationary scaffolding, platforms and other devices shall be so constructed as to bear four times the maximum weight required to be dependent therein or placed thereon when in use, and such swinging scaffolding, platform or other device shall not be so overloaded or overcrowded as to render the same unsafe or dangerous.

SEC. 5. Any person, firm or corporation in this State hiring, employing or directing another to perform labor of any kind in the erecting, repairing, altering or painting of any water pipe, standpipe, tank, smokestack, chimney, tower,

steeple, pole, staff, dome or cupola, when the use of any scaffold, staging, swing, hammock, support, temporary platform or other similar contrivance are required or used in the performance of such labor, shall keep and maintain at all times, while such labor is being performed, and such mechanical device is in use or operation, a safe and proper scaffold, stay, support or other suitable device, not less than sixteen (16) feet or more, below such working scaffold, staging, swing, hammock, support or temporary platform, when such work is being performed, at a height of thirty-two (32) feet, for the purpose of preventing the person or persons performing such labor from falling, in case of any accident to such working scaffold, staging, swing, hammock, support or temporary platform.

SEC. 6. All contractors and owners, when constructing buildings in cities, where the plans and specifications require the floors to be arched between the beams thereof, or where the floors of [or] filling in between the floors are fireproof material or brickwork, shall complete the flooring or filling in as the building progresses, to not less than within three tiers or beams below that on which the ironwork is being erected. If the plans and specifications of such buildings do not require filling in between the beams or floors with brick or fireproof material, all contractors for carpenter work in the course of construction shall lay the under flooring thereof or a safe temporary floor on each story as the building progresses to not less than within two stories or floors below the one to which such building has been erected. Where double floors are not to be used, such owner or contractor shall keep planked over the floor two stories or floors below the story where the work is being performed. If the floor beams are of iron or steel, the contractors for the iron or steel work of buildings in the course of construction, or the owners of such buildings, shall thoroughly plank over the entire tier of iron or steel beams on which the structural iron or steel work is being erected, except such spaces as may be reasonably required for the proper construction of such iron or steel work and for the raising and lowering of materials to be used in the construction of such buildings, or such spaces as may be designated by the plans and specifications for stairways and elevator shafts.

SEC. 7. If elevating machines or hoisting apparatus are used within a building in the course of construction for the purpose of lifting materials to be used in such construction, the contractors or owners shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides by a substantial barrier or railing at least eight feet in height. Any hoisting machine or engine used in such building construction shall, where practicable, be set up or placed on the ground, and where it is necessary in the construction of such building to place such hoisting machine or engine on some floor above the ground floor, such machine or engine must be properly and securely supported with a foundation capable of safely sustaining twice the weight of such machine or engine. If a building in course of construction is five stories or more in height, no material needed for such construction shall be hoisted or lifted over public streets or alleys unless such street or alley shall be barricaded from use by the public. The chief officer in any city, town or village charged with the enforcement of local building laws, and the State factory inspector, are hereby charged with enforcing the provisions of this act: *Provided*, That in all cities in the State where a local building commissioner is provided for by law, such officer shall be charged wth the duty of enforcing the provisions of this act, and in case of his failure, neglect or refusal so to do, the State factory inspector shall, pursuant to the terms of this act, enforce the provisions thereof.

SEC. 7a. If elevating machines or hoisting apparatus, operated or controlled by other than hand power, are used in the construction, alteration or removal of any building or other structure, a complete and adequate system of communication by means of signals shall be provided and maintained by the owner, contractor or subcontractor, during the use and operation of such elevating machines or hoisting apparatus, in order that prompt and effective communication may be had at all times between the operator of engine or motive power of such elevating machine and hoisting apparatus, and the employees or persons engaged thereon, or in using or operating the same.

SEC. 8. It shall be the duty of all architects or draftsmen engaged in preparing plans, specifications or drawings to be used in the erection, repairing, altering or removing of any building or structure within the terms and provisions of this act, to provide in such plans, specifications and drawings for all the permanent structural features or requirements specified in this act; and any failure on the part of any such architect or draftsmen to perform such duty

shall subject such architect or draftsmen to a fine of not less than twenty-five (25) dollars nor more than two hundred (200) dollars for each offense.

SEC. 9. Any owner, contractor, subcontractor, foreman or other person having charge of the erection, construction, repairing, alteration, removal or painting of any building, bridge, viaduct or other structure within the provisions of this act, shall comply with all the terms thereof, and any such owner, contractor, subcontractor, foreman or other person violating any of the provisions of this act shall, upon conviction thereof, be fined not less than twenty-five (25) dollars nor more than five hundred (500) dollars, or imprisoned for not less than three (3) months nor more than two (2) years, or both fined and imprisoned, in the discretion of the court.

And in case of any such failure to comply with any of the provisions of this act, any State factory inspector may, through the State's attorney or any other attorney, in case of his failure to act promptly, take the necessary legal steps to enforce compliance therewith.

If it becomes necessary, through the refusal or failure of the State's attorney to act, for any other attorney to appear for the State in any suit involving the enforcement of any provision of this act, reasonable fees for the services of such attorney shall be allowed by the board of supervisors or county commissioners in and for the county in which such proceedings are instituted.

For any injury to person, or property occasioned by any willful violations of this act, or willful failure to comply with any of its provisions, a right of action shall accrue to the party injured for any direct damages sustained thereby; and in case of loss of life by reason of such willful violation or willful failure as aforesaid, a right of action shall accrue to the widow of the person so killed, his lineal heirs or adopted children, or to any other person or persons who were, before such loss of life dependent for support on the person or persons so killed, for a like recovery of damages for the injuries sustained by reason of such loss of life or lives.

Approved June 3, 1907.

Mine regulations—Shot firers.

(Page 401.)

SECTION 1. An act entitled "An Act providing that operators of mines shall furnish shot firers in mines where shooting and blasting is done," approved May 18, 1905, in force July 1, 1905, is amended to read as follows:

Sec. 2. In all mines in this State where coal is blasted, and where more than two pounds of powder is used for any one blast; and also in all mines in this State where gas is generated in dangerous quantities, a sufficient number of practical, experienced men to be designated as shot firers, shall be employed by the company and at its expense, whose duty it shall be to inspect and do all the firing of all blasts, prepared in a practical, workmanlike manner in said mine or mines.

Sec. 3. The shot firers shall, immediately after the completion of their work, post a notice in a conspicuous place at the mine, in which shall be indicated the number of shots fired; also the number of shots they did not fire, if any, specifying the number of the room and designation of the entry, and giving reasons for not firing the same. In addition they shall also keep a daily permanent record in which shall be entered the number of shots or blasts fired, the number of shots or blasts failing to explode, and the number of shots or blasts that in their judgment were not properly prepared and which they refuse to fire, giving reasons for the same, the record to be in the custody of the mine manager and to be available for inspection at all times by parties interested.

Sec. 4. The superintendent or mine manager shall not permit the shot firers to do any blasting, exploding of shots, or do any firing whatever until each and every miner and employee is out of the mine except the shot firers, mine superintendent, mine manager and man or men necessarily engaged in charge of the pumps and stables: *Provided however*, That nothing in this section shall be construed to prohibit the employment in such mine of a reasonably necessary number of men during such time for the purpose of securing the workings in case of fire therein.

Sec. 5. No miner or other person shall alter or change any drill hole, by increasing its depth, diameter or otherwise, after the same shall have been approved by the shot firer.

Sec. 6. No shot firer, whether voluntarily, or by command or request of any person, shall fire any unlawful shot, or any shot which in his judgment, exer-

cised as aforesaid, from his inspection thereof, made as aforesaid, shall not be a workmanlike, proper and practical shot.

Sec. 7. No person or persons shall order, command or induce by threats, or otherwise, any shot firer to fire any unlawful shot, or any shot which in his judgment, after due inspection, shall not be a workmanlike, proper and practical shot.

Sec. 8. Any willful neglect, refusal or failure to do the things required to be done by any section, clause or provision of this act on the part of the person or persons herein required to do them, or any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any person in the discharge of the duties herein imposed upon them, or any refusal to comply with the provisions of this act, shall be deemed a misdemeanor, punishable by a fine not less than one hundred dollars and not to exceed two hundred dollars, or by imprisonment in the county jail for a period not exceeding three months, or both, at the discretion of the court: *Provided*, That whoever shall discover that any secton of this act, or part thereof, is being neglected or violated shall report the same to the superintendent of the mines and ask immediate compliance therewith; and in case of continued failure to comply shall, through the State's attorney, or any other attorney, in case of his failure to act promptly, take the necessary legal steps to enforce compliance herewith, through and by means of the penalties herein prescribed.

Approved May 20, 1907.

[Other acts amending the mining law were passed, the principal changes being as follows: Making an operator failing to furnish a map of his mine guilty of a misdemeanor; giving the power of appointing the State mining board to the governor instead of to the commissioners of labor; providing for 10 inspectors and inspection districts instead of 7 as heretofore; abolishing the examination fee for mine managers, hoisting engineers and mine examiners; requiring the mine examiner to use an instrument to test air currents on his daily tour of inspection prior to the commencement of work; changing the maximum amount recoverable for loss of life caused by violation of the statute from $5,000 to $10,000; and limiting the period in which suit must be brought to one year after the death of the injured person.]

Employment of children—School attendance.

(Page 520.)

(See Bulletin No. 73, pp. 684, 685.)

INDIANA.

ACTS OF 1907.

CHAPTER 11.—*Railroads—Trains not to be run without sufficient crew.*

SECTION 1. It shall be unlawful for any railroad company doing business in the State of Indiana, that operates more than four (4) freight trains in every twenty-four hours, to operate over its road or any part thereof, or suffer or permit to be run over its road outside of the yard limits, any freight train consisting of more than fifty (50) freight or other cars, exclusive of caboose and engine, with less than a full train crew, consisting of six persons, to wit: One conductor, one engineer, one fireman, two brakemen and one flagman (such flagman to have had at least one year's experience in train service), and it shall be unlawful for any such railroad company that operates more than four (4) freight trains in every twenty-four hours, to run over its road, or any part thereof, outside of the yard limits, any freight train, consisting of less than fifty (50) freight cars or other cars, exclusive of caboose and engine, with less than a full crew for such a train, consisting of five (5) persons, to wit: One conductor, one engineer, one fireman, one brakeman and one flagman: *Provided, however*, That a light engine without cars shall have the following crew, to wit: One conductor, one flagman, one engineer and one fireman.

SEC. 2. It shall be unlawful for any railroad company doing business in the State of Indiana to run over its road or any part of its road, outside of yard limits, any passenger, mail or express train, consisting of five (5) or more cars, with less than a full passenger crew, consisting of one engineer, one fireman, one

conductor, one brakeman and one flagman (said brakeman or flagman shall not be required to perform the duties of baggage masters or express messengers).

SEC. 3. Any railroad company doing business in the State of Indiana, who shall send out on its road, or cause to be sent out on its road, any train which is not manned in accordance with sections 1 and 2 of this act, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense, and such company shall be liable for any damages caused by the violation of any of the provisions of this act.

SEC. 4. It shall be the duty of the board of railroad commissioners to have this law enforced.

Approved February 13, 1907.

CHAPTER 26.—*Railroad relief associations—Contracts.*

SECTION 1. No railroad company now existing, or hereafter created, under and by virtue of the laws of this State or any other State or country, and having and operating a line of railway in this State, may establish or maintain, or assist in establishing or maintaining any relief association or society, the rules or by-laws of which shall require of any person or employee becoming a member thereof to enter into a contract, agreement or stipulation, directly or indirectly, whereby such person or employee shall stipulate, or agree to surrender or waive any right of damage against any railroad company for personal injuries or death, or whereby such person or employee agrees to surrender or waive, in case he asserts such claim for damages, any right whatever, and any such agreement or contract, so signed by such person shall be null and void.

Approved February 21, 1907.

CHAPTER 64.—*Sunday labor—Barber shops.*

SECTION 1. It shall be unlawful for any person or persons to carry on or engage in the art or calling of hair cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber, on the first day of the week, commonly called Sunday, except such person or persons shall be employed to exercise such art or calling in relation to a deceased person.

SEC. 2. It shall be unlawful for any such person or persons, association, firm, corporation or club to keep open their shops or places of business aforesaid, on said first day of the week, commonly called Sunday, for any of the purposes mentioned in section one of this act: *Provided, however*, That nothing in this act shall apply to persons who conscientiously believe the seventh day of the week should be observed as the Sabbath and who actually refrain from secular business on that day.

SEC. 3. Every person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense, to which may be added imprisonment in the county jail not more than thirty days.

Approved February 26, 1907.

CHAPTER 118.—*Railroads—Safety appliances.*

SECTION 1. It shall be unlawful for any common carrier engaged in moving traffic by railroad between points within this State to use on its line any locomotive in moving such traffic not equipped with power driving wheel brakes and appliances for operating the train brake system, or to run any train in such traffic that has not seventy-five per centum of the cars in such train equipped with power or train brakes, and having the brakes used and operated by the engineer of the locomotive drawing such train, and all power brake cars in such train shall be associated together and have their brakes used and operated: *Provided*, That this section shall not apply to the handling of trains or cars in yard service, or to a local train while engaged in performing switching service.

SEC. 2. It shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender or similar vehicle used in moving State traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

SEC. 3. It shall be unlawful for any such common carrier to haul, or permit to be hauled or used on its line, any locomotive, car, tender, or similar vehicle

used in moving of State traffic not provided with secure grab irons or hand holds in the sides or ends thereof.

SEC. 4. It shall be unlawful for any such common carrier to use any locomotive, tender, car, or similar vehicle used in the movement of State traffic, that is not provided with drawbars of standard height; to wit, standard gauge cars 34½ inches; narrow-gauge cars 26 inches; measured perpendicularly from the level of the tops of the rails to the centers of the drawbars; the maximum variation from such standard heights between drawbars of empty and loaded cars shall be 3 inches.

SEC. 5. The provisions of section[s] 1, 2, and 4 of this act shall also apply to locomotives, cars and trains used in passenger traffic between points within this State, in so far as the same are applicable to the vehicles used in passenger train traffic: *Provided*, That none of the provisions of sections 1, 2, 3, and 4 of this act shall apply to any street railroad, interurban or suburban street railroad.

SEC. 6. It shall be unlawful for any common carrier in this State operating an interurban railway by electric power to operate or run upon any railroad in this State any motor car used in regular interurban passenger traffic which is not equipped with an approved power air brake, in good condition, and subject to the control and operation of the motorman in charge of such car, and of sufficient capacity to control the speed of the car.

SEC. 7. The railroad commission of Indiana may, from time to time, after full hearing and for good cause shown, increase the minimum percentage of cars in any train required to be operated by power or train brakes, and a failure to comply with any such requirement of said commission shall be subject to a like penalty as a failure to comply with any requirement of this act. The said railroad commission of Indiana is hereby authorized to grant to any common carrier, subject to this act, upon full hearing and for good cause shown, a reasonable extension of time in which to comply with the provisions of this act: *Provided*, That in no case shall such extension, or extensions, in the aggregate, exceed the period of eighteen months from and after the approval of this act.

SEC. 8. Any such common carrier may refuse to receive from its connecting lines, or from any shipper, any car not equipped in accordance with the provisions of this act.

SEC. 9. It is hereby made the duty of the railroad commission of Indiana to enforce the provisions of this act, and it is hereby authorized, with the consent and approval of the governor, to appoint and pay an inspector, or inspectors, to assist in so doing and in collecting the necessary information required for that purpose, and such commission may adopt and promulgate all needful rules and regulations, not inconsistent with this act, to control the conduct of its inspectors and such carriers in reference to this act and such inspection. All carriers subject hereto shall provide free transportation, good in this State, for the inspectors employed by said commission to be used only while traveling on the business of the commission.

SEC. 10. Every such common carrier, or the receiver thereof, using, or permitting to be used or hauled on its line, any locomotive, tender, car, or similar vehicle or train, in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each violation, to be recovered in a suit or suits to be brought by and in the name of the railroad commission of Indiana for the use of the State of Indiana in any circuit or superior court of this State having jurisdiction over any such offending carrier: *Provided*, That nothing in this act contained shall apply to locomotives, tenders, cars, or trains, exclusively used in the movement of logs, and when the height of the drawbars on such locomotives, tenders and cars does not exceed 25 inches, or to locomotives, tenders, cars, similar vehicles or trains while any of which are in actual use in interstate commerce.

SEC. 11. It shall be unlawful for any steam railroad carrier in this State which operates freight trains over its line in this State to maintain over or across its line in this State any overhead bridge, viaduct or other structure, the lowest point of which is less than twenty-one (21) feet above the level of the top of the rails in the track of any such carrier, without obtaining the permission of the railroad commission of Indiana so to do. It shall also be unlawful for any party, person, association, municipal or private corporation to hereafter construct or hereafter maintain across the track of any such steam railroad carrier any such overhead bridge, viaduct or other structure, the lowest point of which is less than twenty-one (21) feet above the level of the top of

the rails in any such track, without obtaining the permission of the railroad commission of Indiana so to do: *Provided, however,* That this section shall not apply to bridges, viaducts or other structures within the limits of any city or incorporated town in this State, nor shall this act operate to repeal or modify the laws of this State concerning the location and erection of wires across railroads, street railroads, interurban or suburban railroads.

SEC. 12. It shall hereafter be unlawful for any steam railroad carrier in this State engaged in operating a line of standard gauge railroad in this State, to build any structure of any kind, or any existing railway bridge, or to rebuild an existing structure of any kind, or any existing railway bridge, along the line of any such railroad in this State, in which that part of any such structure or bridge nearest the track shall be less than eighteen (18) inches from the nearest point of contact with the cab of the widest locomotive that is now or may hereafter be used, or less than eighteen (18) inches from the nearest point of contact with the widest part of any car that is now or hereafter may be used, on any such railroad, without first obtaining the permission of the railroad commission of Indiana so to do.

SEC. 13. Every such common carrier, party, person, association or municipal or private corporation which shall violate any of the provisions of sections 11 or 12 of this act, after receiving sixty days' notice from the railroad commission of Indiana that some provision of such sections is being violated, shall be subject to a penalty of five hundred dollars for each violation, to be recovered in an action to be brought by and in the name of the railroad commission of Indiana for and on behalf of the State of Indiana in any circuit or superior court in this State having jurisdiction of the offending party.

SEC. 14. Any employee of any such common carrier who may be killed or injured by any locomotive, tender, car, similar vehicle, or train in use contrary to the provisions of this act, or who shall be killed or injured on account of any of the structures forbidden in sections 11 and 12 of this act, shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, tender, car, similar vehicle, or train, or the maintenance of such unlawful structures named in sections 11 and 12 of this act, had been brought to his knowledge, nor shall any such employee be held as having contributed to his injury in any case where the carrier shall have violated any of the provisions of this act when such violation contributed to the death or injury of any such employee.

Approved March 8, 1907.

CHAPTER 120.—*Railroads—Bribery of employees.*

SECTION 1. Any person, being an officer, agent or employee of any common carrier doing business in this State, who shall, directly or indirectly, solicit, accept or receive from any person, firm or corporation any money, property or thing of value, in consideration for which such officer, agent or employee does, or agrees to do, or perform, any act for and on behalf of such carrier, and in the behalf of such person, firm or corporation, shall be guilty of bribery, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars.

SEC. 2. Any person or corporation, or any agent, employee or officer of any firm or corporation, who shall, directly or indirectly, offer, pay or deliver to any officer, agent or employee of any common carrier doing business in this State, any money, property or thing of value, in consideration for which such officer, agent or employee does, or agrees to do, or perform, any act for and on behalf of such carrier, and in the behalf of such person, firm or corporation, shall be guilty of bribery, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than one hundred dollars: *Provided,* That the payment and acceptance of the established and regular charges imposed by any such common carrier for services performed by it shall not constitute either of the crimes defined by this act.

Approved March 8, 1907.

CHAPTER 121.—*Mine regulations—Washhouses.*

SECTION 1. For the protection of the health of the employees hereinafter mentioned it shall be the duty of the owner, operator, lessee, superintendent of, or other person in charge of every coal mine or colliery, or other place where

laborers employed are surrounded by or affected by similar conditions as employees in coal mines, at the request in writing of twenty (20) or more employees of such mine or place, or in event there are less than twenty (20) men employed, then upon the written request of one-third (⅓) of the number of employees employed, to provide a suitable wash room or washhouse for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves, and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and be supplied with clean cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe-keeping of clothing: *Provided, however*, That the owner, operator, lessee, superintendent of or other person in charge of such mine or place as aforesaid shall not be required to furnish soap or towels.

SEC. 2. If any person, persons or corporation shall neglect or fail to comply with the provisions of this act, or shall maliciously injure or destroy or cause to be injured or destroyed said building or room, or any part thereof or any of its appliances or fittings used for supplying light, heat or water therein, or shall do any act tending to the injury or destruction thereof, he or they shall be guilty of misdemeanor, and upon conviction shall be fined in any sum not to exceed five hundred ($500) dollars, to which fine may be added imprisonment in the county jail not to exceed sixty (60) days.

Approved March 8, 1907.

CHAPTER 131.—*Railroads—Hours of labor of employees.*

SECTION 1. It shall be unlawful for any superintendent, train dispatcher, yard master, foreman or other railway official, to permit, exact, demand or require any engineer, fireman, conductor, brakeman, switchman, telegraph operator or other employee engaged in the movement of passenger or freight trains, or in switching service, in yards or railway stations, to remain on duty more than sixteen consecutive hours, except when by casualty occurring after such employee has started on his trip, or by unknown casualty occurring before he started on his trip, he is prevented from reaching his terminal, or to require or permit any such employee who has been on duty sixteen consecutive hours, to go on duty without having had at least eight hours off duty, or to require or permit any such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, to continue on duty or go on duty without having had at least eight hours off duty within such twenty-four-hour period.

SEC. 2. For any violation of or failure to comply with any of the provisions of this act, such company shall be liable to all persons and employees injured by reason thereof, and no employee shall in any case be held to have assumed the risk incurred by reason of such violation or failure.

SEC. 3. Any superintendent, train dispatcher, train master, foreman or other official of any railway, in the State of Indiana, violating any of the provisions of this act, is hereby declared to be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, and it shall be the duty of the railroad commission to fully investigate all cases of the violation of this act and to lodge with the attorney-general information of such violation as may come to its knowledge.

SEC. 4. The provisions of this act shall not apply to relief or wreck trains while clearing obstructions to the main line of any railroad.

Approved March 8, 1907.

CHAPTER 197.—*Mine regulations—Width of entries.*

SECTION 1. It shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana, to make, dig, construct, or cause to be made, dug, or constructed any entry or track way after the taking effect of this act, in any coal mine in the State of Indiana where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any such entry of at least two (2) feet width, free from any props, loose slate, debris or other obstruction so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employee, person or persons to knowingly, purposely, or mali-

ciously place any obstruction within said space as herein provided: *Provided*, That the geological veins of coal numbers three and four commonly known as the lower and upper veins in the block coal fields of Indiana shall be exempt from the provisions of this act.

SEC. 2. Any such owner, lessee, operator, person or persons, violating any of the provisions of this act shall be guilty of misdemeanor and upon conviction thereof shall be fined in any sum not to exceed two hundred dollars and to which fine may be added imprisonment in the county jail, not to exceed sixty days.

Approved March 9, 1907.

CHAPTER 204.—*Mine regulations—Blasting, etc.—Inspectors.*

SECTION 1. It shall be unlawful for any person to take or have in his possession, or under his control within any coal mine in the State of Indiana, any dynamite cap, dynamite or other high explosive without first obtaining in writing the consent of the mine foreman or other person in charge of the operation of said mine, setting forth the use for which any such cap or explosive may be particularly intended.

SEC. 2. It shall be unlawful for any person for the purpose of blasting coal in any mine in this State, to prepare any "shot" in such a way that the distance from the drill hole to the "loose end," "chance" or end of cutting shall be more than five feet measured at right angles to the direction of the hole; or to place any charge of powder or other explosive in any drill hole prepared for any "shot" in which the breast of coal to be dislodged is of greater width than the depth of the drill hole; or to use in preparing any "shot" more than six pounds of powder; or to place any powder in any drill hole for the purpose of preparing any shot without measuring the amount so placed therein with a substantial measure so made as to indicate the weight of blasting powder measured therein; or to open a keg, can or other package containing powder, by means of a pick or in any other manner except in pursuance of the manner provided in the manufacture of such keg, can or package; or to sell or offer for sale any keg, can or package containing powder unless such can, keg or package be provided with a sufficient device for opening the same and permitting the discharge therefrom of all the powder therein contained; or to store any blasting powder, dynamite or other high explosive in any coal mine; or to prepare any drill bit more than two and one-half inches in diameter to be used in boring holes for the purpose of preparing any shot; or to use any dynamite or other high explosive in conjunction with black powder.

SEC. 3. It shall be unlawful for any person for the purpose of blasting coal in any mine in this State, except in any mine producing block coal, to drill any hole past the end of his cutting, "loose end" or "chance."

SEC. 4. If upon inspection of any working place in any coal mine there shall be found the remnants of drill holes drilled past the cutting, loose end or chance, or the remnants of any shot measuring more than the maximum width, or if any miner shall be found to have in his possession in his working place any keg, can or package containing powder and which has been opened in any other manner than that provided by law, the same or either thereof respectively shall be and constitute prima facie evidence that the workman in whose working place such evidence is found is guilty of a violation of sections 2 or 3 or [of] this act, or a part thereof, as the case may be.

SEC. 5. It shall be unlawful in any coal mine for any person to explode or light any shot in any working place simultaneously with the explosion or lighting of any shot by the same or any other person in any other working place on the same entry, except in working places where the coal is undercut my [by] machinery.

SEC. 6. At all coal mines where any escape way or manway is hereafter constructed, the same shall be provided with a good and sufficient stairway, according to the specifications for mine stairways now provided by law, and of suitable design and strength to accomplish the purpose for which it is intended.

SEC. 7. It shall be unlawful for any person desiring carriage upon any cage to approach nearer than six (6) feet to any "cage landing" when such cage is not at rest at such landing; or to crowd on to said cage in a rude or boisterous manner; or to enter upon any such cage when there are already upon the same one person for each three square feet of the floor space of such cage: *Provided*, That nothing herein contained shall affect any person in charge of the operation of such cage or the machinery moving or affecting the same: *And, provided*

further, That as many persons may after the passage of this act enter a cage for carriage as the same will accommodate, giving each person three square feet of floor space.

SEC. 8. It shall be the duty of the operator or owner of any coal mine wherein fire clay or other noninflammable material suitable for use in tamping in preparing shots can not be readily obtained, to provide and deposit within said mine such material, and at points within five hundred feet from the face of each entry in such mine. In case any dispute may arise as to the construction proper to be placed upon the above provision, or as to the duty of any such operator or owner thereunder, such dispute shall be finally determined by the inspector of mines.

SEC. 9. At any coal mine in the State where the miners working therein so elect, persons may be employed to act as shot firers, and their wages shall be paid by the miners working therein: *Provided*, That nothing herein contained shall affect any existing contract as to shot firers.

SEC. 10. The result of all coal mine inspections made by the inspector of mines or any of his assistants, showing all his conclusions as to the condition of safety of the mines and orders given in the inspection of any coal mine shall be posted in writing at the entrance to such mine immediately upon the conclusion of each inspection. The inspector of mines or his assistants shall make personal inspection of all coal mines in the State at least three times each year instead of twice each year, as heretofore provided by law, and to enable said inspector and his assistants to discharge all the duties created by this act and other acts the number of his assistants is hereby increased from two to four. Such additional assistants shall possess the same qualifications and perform the same duties required by this and any and all other laws, and shall be appointed, empowered, and in all things governed in the same manner and by the same laws applicable to assistants to such inspector of mines heretofore existing under former laws. Such additional assistants shall each receive for his services the sum of one thousand two hundred dollars per annum; and for expenses they shall receive the sum actually and necessarily expended for that purpose in the discharge of their official duties, all to be paid quarterly by the State treasurer from funds in the State treasury not otherwise appropriated. All expense shall be sworn to and shall show the items of expense in detail. Such inspector and each of his assistants are hereby charged with the duty of enforcing this act and all other laws relating to the health and safety of persons and property employed and used in and about the coal mines of the State.

SEC. 11. The inspector of mines and each of his assistants are hereby empowered to act as police officers, with full powers to arrest and detain any person found violating any provisions of this act or any other mining law, or engaged in any attempt to violate any such law or part thereof, or against whom there is found any evidence of a previous violation of such law: *Provided, however*, That no such person shall be detained for any period of time longer than twenty-four hours without warrant or the filing of a charge against him in a court of competent jurisdiction. Such inspector and each of his assistants shall also have power to immediately stop the operation of any coal mine, or part thereof, in which any dangerous or unlawful condition is found: *Provided, however*, That where conditions exist justifying him to do so, he may grant a reasonable length of time for making necessary repairs: *And, provided further*, That where any stop is enforced, such inspector and his assistants shall each have power to subsequently allow such mine or part of mine to be reopened when the dangerous or unlawful conditions have been remedied or removed, so that they no longer exist.

SEC. 12. The inspector of mines shall have power in his discretion to order the sprinkling of any coal mine or part of mine by notice in writing to the operator thereof, or person in charge of the same, and after receiving such notice it shall be unlawful for any person to act in violation thereof and to omit such sprinkling. Copies of any notices given hereunder shall be posted at the mine entrance by the inspector of mines.

SEC. 13. After the passage of this act no further certificates of service shall be issued by the inspector of mines to any person to act as mine boss, fire boss or hoisting engineer: *Provided, however*, That nothing herein contained shall affect any certificate of service heretofore issued.

SEC. 14. Any persons violating any provision of this act or willfully refusing, neglecting or failing to do anything required to be done by any provision hereof by such person, or obstructing or attempting to obstruct or interfere with the

inspector of mines or any of his assistants in the discharge of any duty imposed by law, or refusing, failing or neglecting to comply with the proper orders of the inspector of mines or his assistants, shall be guilty of a misdemeanor punishable on conviction by a fine not exceeding five hundred dollars, to which may be added imprisonment in the county jail for a period not exceeding six months, in the discretion of the court or jury trying any such cause.

SEC. 15. Whoever, being an inspector of mines or an assistant thereof, shall fail, neglect or refuse to perform any duty required of him by this or any other law relating to the health and safety of persons employed in coal mines and matters connected therewith, shall upon conviction thereof be fined not to exceed five hundred dollars, and upon a second conviction for an offense hereunder shall, upon certification of judgment thereof to the proper officer holding the power of appointing his successor, be immediately removed from office by such officer without any further proceedings.

SEC. 16. On, or before January 1, 1909, and biennially thereafter, it shall be the duty of the State geologist and chemist to the State board of health to prepare a list of questions on the subjects of mine engineering, chemistry as applied to coal mining, and the practical operations of coal mining as concerns the coal mining industry in Indiana. These questions shall be so prepared and the answers so graded that it shall be possible for an applicant to make twenty-five (25) points on the questions relating to mine engineering; twenty-five (25) points on the questions relating to chemistry as applied to coal mining; and fifty (50) points on the questions relating to the practical operations of coal mining.

SEC. 17. Within fifteen (15) days from the first day of January, 1909, and biennially thereafter, the chemist to the State board of health shall hold an examination, using the said list of prepared questions, in the State capitol, which examination shall be open to any male citizen of the State of over twenty-one (21) years of age, of good moral character, who has had at least five years' experience as a practical coal miner, and shall grade the manuscripts of all persons taking such examination, and shall prepare and certify to the State geologist an eligible list of all applicants who shall make a grade of 85 per cent or greater.

SEC. 18. The State geologist immediately thereafter shall appoint from said eligible list an inspector of mines to serve for a period of two (2) years; and the inspector of mines thus appointed shall appoint from said eligible list his deputies, as now or hereafter may be provided by law. Said inspector shall qualify as now provided by law, and shall have all the powers, duties and compensation as now provided by law, and shall be subject to removal by said geologist for cause, as provided by law. In case of death, resignation or removal of the inspector of mines, the State geologist shall appoint his successor from said eligible list.

SEC. 19. The assistant inspector of mines shall qualify as now provided by law, and shall have the same powers, duties and compensation, with traveling expenses, as now provided by law. Said assistant inspectors of mines may be removed by the inspector of mines, as now provided by law. In case of death, resignation or removal of any of said assistant inspectors of mines, the inspector of mines shall appoint his successor from said eligible list.

SEC. 20. In case the said eligible list shall be exhausted before the date of regular biennial examination, appointments shall be made from the list of applicants who passed the last examination: *Provided*, That the person holding the highest grade shall be first chosen.

SEC. 21. The provisions of this act shall be cumulative of other laws upon the subject of coal mining: *Provided, however*, That all laws and parts of laws in conflict herewith are hereby repealed.

Approved, March 9, 1907.

CHAPTER 205.—*Railroads—Block system to be installed.*

SECTION 1. After the 1st day of July, 1909, it shall be unlawful for any person, firm or corporation, or the lessee or receiver of any person, firm or corporation, which shall own or operate any line of railroad in this State, to operate any train over such railroad by steam power unless such railroad is equipped with and has in operation an approved block system for the control of train movements thereon: *Provided*, That the provisions of this section shall not apply to any such railroad as shall not have a gross annual income from operation of seventy-five hundred ($7,500) dollars or more per mile of line, to be determined from its last preceding annual report to the railroad commission of Indiana.

SEC. 2. Power and authority are hereby conferred upon the railroad commission of Indiana to extend the time specified in section one of this act when it shall be made to appear to it that a reasonable necessity for such extension shall exist, provided that the extension so granted shall not exceed one year. Full power and authority are also conferred upon such commission to relieve any such party from complying with this act as to any branch or spur lines when it shall be made to appear that no reasonable necessity therefor exists. Full power and authority are also hereby conferred upon such commission to relieve any such party from the obligations imposed by section one of this act when it shall be made to appear that the volume of traffic and train movement over any such railroad are such only that the same can be dispatched without substantial hazard to life and property over a line not so protected.

SEC. 3. Any person, firm or corporation, receiver or lessee who or which shall violate section one of this act shall forfeit and pay to the State of Indiana the sum of one thousand dollars per week for each week that trains shall be operated over any such railroad in violation of such section, the same to be collected by the railroad commission of Indiana by a suit in its name for the use of the State of Indiana in any court of competent jurisdiction.

Approved March 9, 1907.

CHAPTER 241.—*Accidents on railroads.*

SECTION 19. Section 23 of said act [of February 28, 1905] shall be amended so as to read as follows: Section 23 * * * It shall be the duty of said commission to keep informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of the State.

(a) Every railroad company subject hereto shall report to the [railroad] commission within five (5) days after it has occurred, every accident and the general cause thereof, involving loss of life, or serious injury to passenger or employee, and within twenty days after such accident the company shall make a full report of the cause thereof to the commission, and the commission shall investigate in such manner and by such persons as it may deem best, the causes of any accident on any railroad involving loss of life, and every corporation at all times, shall furnish to the commission, its appointees, or its inspectors any information relative to such accidents. Such reports and information shall not be used in the trial of any suits for damages arising out of said accidents, and the commission shall not give publicity to such information if in its judgment the public interests do not require it. After such investigation, the said commission shall make a report to the railroad company of its conclusion and recommendations regarding such accidents and the causes thereof, and the proper steps to be taken by the railroad company to prevent like accidents, and unless the railroad company shall in a reasonable time comply with and carry out said recommendations, said commission shall make the same public, if it shall deem best so to do, by publishing the same in any newspaper or newspapers in this State, or in the locality where the accident took place. * * *

Approved March 9, 1907.

CHAPTER 272.—*Railroads—Rules for employees—Accidents.*

SECTION 1. Every person, firm or corporation operating trains by steam power on railroads in this State, shall publish printed rules for the control and operation of such trains and shall deliver copies thereof to all persons engaged in the operation of such trains and file a copy thereof with the railroad commission of Indiana, and shall instruct such employees in the application of such rules and examine such employees thereon at least once in each six months after employment until the service has continued for eighteen months, and annually thereafter. Any person, firm or corporation failing to observe the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof, for each offense, shall be fined not less than twenty-five dollars nor more than two hundred dollars.

SEC. 2. Be it further enacted that the railroad commission of Indiana shall call together in convention, at least once in every year, the division superintendents and such other operating and dispatching officers and employees of the steam railroads of this State as the commission may deem best, and shall place before said convention the reports filed with the railroad commission with ref-

erence to railroad accidents that have taken place during the year, together with such findings and conclusions thereon as such commission shall have made, and said convention shall thoroughly investigate said reports, findings and conclusions and discuss the same with a view to taking such steps by the commission, by such railroad companies and by their officers and employees as may be necessary or expedient to prevent such accidents.

SEC. 3. Be it further enacted, that it is hereby declared to be unlawful for any agent, officer or employee of any person, firm or corporation engaged in the operation of railroad trains by steam power in this State, to be or become intoxicated while in the performance of his duties as such, and it is also hereby declared to be unlawful for any such person to operate any such train or give orders or directions for the operation of any such train contrary to the printed rules of his company, regulating the operation of railroad trains by steam power in this State, which are required by section one of this act, and it is further declared to be unlawful for any such person to operate any such train or direct the operation of any such train in violation of any law of this State, and any such person so offending shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars and not more than five hundred dollars.

SEC. 4. Be it further enacted that whenever the railroad commission of Indiana, in the investigation of any accident involving loss of life, shall come to the conclusion that the accident occurred on account of the violation of the printed rules for the operation of trains, as required by section one of this act, by any officer or employee of any railroad company operated by steam power in this State, the commission may, if it deems best so to do, and the neglect of duty or violation of the rules is flagrant or has been brought about by the intoxication of any person while on duty, report such person to the prosecuting attorney of the county wherein the accident occurred for prosecution under the criminal laws of this State.

SEC. 5. Be it further enacted, that copies of this act, within sixty days after the same goes into effect, shall be, by the companies subject hereto, printed and conspicuously posted in the train cabooses, depots, and offices of train dispatchers and upon the bulletin boards at division headquarters of said companies.

Approved March 12, 1907.

IOWA.

ACTS OF 1907.

CHAPTER 103.—*Hours of labor of employees on railroads.*

SECTION 1. It shall be unlawful for any railway company within the State of Iowa, or any of its officers or agents to require or permit any employee engaged in or connected with the movement of any rolling stock, engine or train, to remain on duty more than sixteen (16) consecutive hours, or to require or permit any such employee who has been on duty sixteen (16) consecutive hours to perform any further service without having had at least ten hours for rest, or to require or permit any such employee to be on duty at any time to exceed sixteen (16) hours in any consecutive twenty-four (24) hours: *Provided, however*, That this section shall not apply to work performed in the protection of life or property in cases of accident, wreck, or other unavoidable casualty, or prevent train crews from taking a passenger train, or freight train loaded exclusively with live stock or perishable freight, to the next nearest division point upon such railroad: *And provided further*, That it shall not apply to that time necessary for the trainmen to reach a resting place when an accident, wreck, washout, snow blockade or other unavoidable cause has delayed their train: *And provided further*, That this section shall not apply to employees of sleeping-car companies.

SEC. 2. Any superintendent, train master, train dispatcher, yard master or other official of any railroad in the State of Iowa, violating any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars ($100) and not more than five hundred dollars ($500) for each offense. It shall be the duty of the board of railroad commissioners to receive written statements of violations of this act and when so requested to hold the same without disclosure of the name of the person making such statement, and to investigate each and every complaint filed alleging such violation. The board

in making such investigation shall have the power to administer oaths, interrogate witnesses, take testimony, and require the production of books and papers, and must file a report of such investigation in writing with a full statement of its finding to the governor. In all cases of violation of this act, the board of railroad commissioners, through the attorney-general, must at once begin the prosecution of all parties against whom evidence of violation is found; but this act shall not be construed to prevent any other person from beginning prosecution for violation hereof.

Approved April 2, A. D. 1907.

CHAPTER 109.—*Height of wires over railroad tracks.*

SECTION 1. The railroad commissioners of this State shall have general supervision over any and all wires for transmitting electric current or any other wire whatsoever crossing under or over any track of a railroad in this State.

SEC. 2. Within thirty (30) days from the taking effect of this act said railroad commissioners shall make regulations prescribing the manner in which such wires shall cross such railroad tracks in this State.

SEC. 3. It shall hereafter be unlawful for any corporation or person to place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad in this State except in such manner as may be prescribed by the railroad commissioners as provided by this act.

SEC. 4. The board of railroad commissioners shall, as soon as possible after the taking effect of this act, either by personal examination or otherwise, obtain information where the tracks or railroads are crossed by wires strung over said tracks, contrary to or not in compliance with the rules prescribed by the railroad commissioners as contemplated by this act, and shall order such change or changes to be made by the persons or corporations owning or operating such wires as it may deem necessary to make the same comply with said rules and within such reasonable time as it may prescribe.

SEC. 5. In case such wires cross over said track, in no case shall said board of railroad commissioners prescribe a less height than twenty-two (22) feet above the top of the rails of any railroad track for any wire.

SEC. 6. The board of railroad commissioners are hereby authorized to provide for and regulate the crossing of wires over and across railroad rights of way at highways and other places within the State.

SEC. 7. Any person or corporation who string or maintain any wire across any railroad track in this State at a different height or in a different manner from that prescribed by the said board of railroad commissioners shall forfeit and pay to the State of Iowa the sum of one hundred dollars ($100) for each separate period of ten days during which such wire is so maintained, said forfeiture to be recovered in a civil action brought in any court of competent jurisdiction in the name of the State of Iowa, by the attorney-general, or by the county attorney of the county in which such wire is situated, at the request of the said board of railroad commissioners, and it is hereby made the duty of the said attorney-general and county attorney to bring such action forthwith upon being so requested.

Approved April 6, A. D. 1907.

CHAPTER 110.—*Accidents on railroads.*

SECTION 1. Upon the occurrence of any serious accident upon any railroad within this State, which shall result in personal injury, or loss of life, the corporation operating the road upon which the accident occurred shall give immediate notice thereof to the board of railroad commissioners whose duty it shall be, if they deem it necessary, to investigate the same, and promptly report to the governor the extent of the personal injuries, or loss of life, and whether the same was the result of mismanagement or neglect of the corporation on whose line the injury or loss of life occurred: *Provided*, That such report shall not be evidence or referred to in any case in any court.

Approved March 27, A. D. 1907.

CHAPTER 128.—*Employment offices.*

SECTION 1. Every person, firm or corporation who shall agree or promise, or who shall advertise through the public press, or by letter, to furnish employ-

ment or situations to any person or persons, and in pursuance of such advertisement, agreement or promise, shall receive any money, personal property or other valuable thing whatsoever, and who shall fail to procure for such person or persons acceptable situations or employment as agreed upon, within the time stated, or agreed upon, or if no time be specified then within a reasonable time, shall upon demand return all such money, personal property or valuable consideration of whatever character, except an amount not to exceed one dollar to be charged as a filing fee.

SEC. 2. It shall be unlawful for any person, firm or corporation to receive any application for employment from, or enter into any agreement with, any person to furnish or procure for said person any employment unless there is delivered to any such person making such application or contract at the time of the making thereof a true and full copy of such application or agreement, which application or agreement shall specify the fee or consideration to be paid by the person seeking employment.

SEC. 3. It shall be unlawful for any person, firm or corporation or any person employed or authorized by such person, firm or corporation to hire or discharge employees, to receive any part of any fee or any percentage of wages or any compensation of any kind whatever, that is agreed upon to be paid by any employee of said person, firm or corporation to any employment bureau or agency for services rendered to any such employee in procuring for him employment with said person, firm or corporation.

SEC. 4. The commissioner of the bureau of labor statistics, or his deputy, shall have authority to examine at any time the records, books and any papers relating in any way to the conduct of any employment agency or bureau within the State, and must investigate any complaint made against any such employment agency or bureau, and if any violations of law are found he shall at once file or cause to be filed an information against any person, firm or corporation guilty of such violation of law.

SEC. 5. Any person, firm or corporation violating any of the provisions of this act, or who shall refuse access to records, books or other papers relative to the conduct of such agency or bureau, to any person having authority to examine same, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars ($100.00), or imprisonment in the county jail not to exceed thirty days.

Approved March 27, A. D. 1907.

CHAPTER 130.—*Mine regulations—Powder.*

SECTION 1. No person, firm or corporation, shall be permitted to transport, carry or convey by any electrical process whatever, any powder or other explosive, into any coal mine where twenty or more persons are employed therein until after the coal miners and other employees have ceased their work and have departed from the mines.

SEC. 2. No operator or other person in charge of any coal mine, shall suffer or permit under any circumstances the storing of powder, or other explosives, in any coal mine except as follows: Each miner shall be permitted to have in his separate and individual possession at one time not more than two kegs containing twenty-five pounds of powder each, and other explosives sufficient for one day's use. Such powder, or other explosives, shall be kept by the miner in a wooden or metallic box or boxes securely locked, and said boxes shall be kept at a reasonable distance from the track; nor shall black powder and high explosives be kept in the same box.

SEC. 3. It shall not be construed as storing powder, as defined in section two hereof, to deposit the powder, or other explosives, at the end of the electrical or mechanical haulage at the face of the mine for the following day's use: *Provided*, That it is transported, conveyed or deposited in conformity with the provisions of section one hereof.

SEC. 4. The transportation and delivery of all powder and other explosives in said coal mines shall be done by the operator or by men employed by him for that purpose.

SEC. 5. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding one hundred dollars, or be imprisoned in the county jail not exceeding thirty days.

Approved April 13, A. D. 1907.

CHAPTER 181.—*Liability of employers for injuries to employees—Assumption of risk.*

(See p. 63, above.)

CHAPTER 183.—*Bribery of employees.*

SECTION 1 (as amended by chapter 184, Acts of 1907). It shall be unlawful for any agent, representative or employee, officer or any agent of a private corporation, or a public officer, acting in behalf of a principal in any business transaction, to receive, for his own use, directly or indirectly, any gift, commission, discount, bonus or gratuity connected with, relating to or growing out of such business transaction: and it shall be likewise unlawful for any person, whether acting in his own behalf or in behalf of any copartnership, association or corporation, to offer, promise or give directly or indirectly any such gift, commission, discount, bonus or gratuity. Any person violating the provisions of this act or any of them shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars ($25), nor more than five hundred dollars ($500), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment: "*Provided*, This act shall not apply to those cases in which the principals, being the contracting parties, have knowledge of and consent to the payment of a commission to an agent or representative."

SEC. 2. No person shall be excused from attending, testifying or producing books, papers, contracts, agreements and documents before any court or in obedience to the subpœna of any court having jurisdiction of the misdemeanor on the ground or for the reason that the testimony or evidence, documentary, or otherwise, required of him, may tend to incriminate him or to subject him to a penalty or forfeiture. But no person shall be liable to any criminal prosecution, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before said court or in obedience to its subpœna or in any such case or proceeding: *Provided*, That no person so testifying or producing any such books, papers, contracts, agreements or documents shall be exempted from prosecution and punishment for perjury committed in so testifying.

Approved April 5, A. D. 1907.

KANSAS.

ACTS OF 1907.

CHAPTER 249.—*Mine regulations—Entries.*

SECTION 1. In all cases where any coal mine now in operation in this State, with its principal or main shaft of a depth of one thousand feet or more, and has no air or escapement shaft other than its main or principal shaft, the time in which to complete such air or escapement shaft, as required by chapter 304, Laws of Kansas, 1905, page 473, is hereby extended two years from the 1st day of March, A. D. 1907: *Provided*, That work on said escapement shaft shall commence within sixty days of the taking effect of this act, and shall continue, barring unavoidable accidents, until said escapement shaft shall be completed.

Approved February 21, 1907.

CHAPTER 250.—*Mine regulations—Powder.*

SECTION 1. It shall be unlawful for any individual, firm, or corporation to sell, offer for sale or deliver for use at any coal mine or mines in the State of Kansas, black powder in any manner except in original packages containing twelve and one-half pounds of powder, said package to be securely sealed; said powder to be delivered by the company to the miner at its powder house, not more than three hundred feet from pit head, unless hereafter otherwise provided by contract: *Provided, however*, This act shall not be construed as in any manner conflicting with any existing contract of sale of black powder.

SEC. 2. It shall be unlawful for any miner, mine laborer or other person in any mine or mines to open any original package of powder in any manner other than unsealing the seal thereof.

SEC. 3. It shall be unlawful for any miner, mine laborer or other person or persons to take, convey, or cause to be taken or conveyed, into any mine or mines in the State of Kansas, black powder in any other manner except as provided in section 1 of this act. It shall be unlawful for any miner, laborer or other person to use any pick or other metal substance or instrument in opening any can containing powder in the mine: *Provided*, That any can filled with powder so received and opened by any miner or other person shall be returned, complete, when emptied, at the miner's working switch, to the company furnishing the same, before such miner or other person shall receive another can of powder.

SEC. 4. No powder shall be delivered by hauling the same in any car hauled by an electric motor, unless the car in which the powder is hauled for delivery is thoroughly insulated.

SEC. 5. Any person or corporation or officers or employees of any corporation violating any of the provisions of sections 1 and 4 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined not exceeding fifty dollars for each offense.

SEC. 6. Any miner, mine laborer or other person who shall violate the provisions of sections 2 or 3 of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be fined not exceeding ten dollars for each offense.

Approved March 5, 1907.

CHAPTER 251.—*Mine regulations—Inspection.*

SECTION 1. Section 2 of chapter 257 of the Session Laws of 1901 is hereby amended so as to read as follows: Section 2. That the State mine inspector may be enabled to perform the duties here imposed upon him, he shall have the right at all times to enter any coal mine to make examination or obtain information. If, in any coal mine or underground workings of the character mentioned in section 1 of this act, or in any portion of such mine or workings, because of improper or inadequate ventilation, the presence of stagnant or noxious or explosive gases, inadequate or improper air ways or air gates, or the use or presence, with the knowledge, connivance or consent of the operator or person in active charge of said mine, for illuminating purposes, of oil, other than lard, or other equally safe first-class oil, lack of adequate and lawful stairways, break throughs, or manholes, or for any other reasons within the power of the operator, owner or lessee, by the exercise of ordinary care, to remove or guard against, or cause to be removed or guarded against, be or become injurious to the health or dangerous to the lives or limbs of persons working in such mine or part of mine, the State mine inspector shall notify the owners, lessees or agents, immediately, of the discovery of any violation of this act, and of the penalty imposed thereby for such violation, and in case of such notice being disregarded for the space of ten days, he shall institute prosecution against the owner, owners, lessees or agents of the mine, under the provisions of section 16, chapter 159, Laws of 1897. In any case, however, where in the judgment of such inspector delay may jeopardize life or limb, he shall at once proceed to the mine where the alleged danger exists and examine into the matter, and if after full investigation thereof he shall be of the opinion that there is immediate danger to life or limb by reason of the unsafe condition of said mine or some part thereof, he shall immediately order the owner, lessee, operator, agent, manager, superintendent or person in charge of the mine to forthwith repair and put in reasonably safe condition such dangerous mine or part of mine, or suspend all work in and about such mine or parts of mine found to be in fact dangerous to life or limb; and in the event that said owner, lessee, operator, agent, manager, superintendent or person in charge of the mine fails to use due diligence in causing the repairs so ordered to be made in the time specified by said mine inspector, then said mine inspector shall order the owner, lessee, operator, agent, manager, superintendent or person in charge of the mine to immediately suspend all work in and about such mine or parts of mine found to be in fact dangerous to life or limb; and if the owner, lessee, operator, agent, manager, superintendent or other person in charge of the mine shall refuse or neglect to comply with such order, when such mine or some part thereof is in fact dangerous to the life or limb of parties working therein, and forthwith repair or suspend all work in or about such mine or parts of mine so found to be in fact dangerous, he shall be guilty of a misdemeanor, and upon conviction thereof shall be

fined not exceeding four hundred dollars. Work in and about such mine or parts of mine so found to be dangerous shall not be resumed until permission of the inspector is first obtained, unless by order of some court of competent jurisdiction. In case of the inspector making such order, the owner, operator, superintendent or other person in charge of such mine may bring an action in any court of competent jurisdiction to enjoin the inspector from interfering with the operation of the mine, but no injunction shall be granted upon such application without twenty-four hours' notice to the inspector, and a hearing upon such application. Said notice may be personally served upon said inspector or his deputy, if found in the country [county], but if said inspector or his deputy can not be found in the country [county] where said action is commenced, then notice or summons may be served [on] said inspector by placing a certified copy thereof, securely sealing, stamping, addressing and mailing same to said inspector, at the post-office nearest the mine sought to be closed by said inspector; and a return of the sheriff showing service of notice or summons can not be served on the inspector or his deputy in said county shall be sufficient grounds upon which to obtain service by mailing same as above provided.

Approved February 27, 1907.

CHAPTER 280.—*Hours of labor of employees on railroads.*

SECTION 1. Section 1 of chapter 342 of the Session Laws of 1905 [shall] be amended to read as follows: Section 1. It shall be unlawful for any corporation or receiver operating a line of railroads [railroad] in whole or in part in the State of Kansas, for any officer, agent or representative of such corporation or receiver, to require or permit any conductor, engineer, fireman, brakeman, train dispatcher, telegraph operator or any trainman who has worked in his respective capacity for sixteen consecutive hours to continue on duty or perform any work for such railroad until he has had at least eight hours' rest: *Provided*, That this act shall not apply in case of washout, wrecks, or unavoidable blockades, nor shall it be construed to prevent the crew of a train which contains live stock or perishable freight in carload lots from running to the next division point after the expiration of the time limit provided for in this act: *Provided further*, That this section shall not apply to employees of sleeping-car companies, baggagemen, and express messengers.

SEC. 2. Section 2 of chapter 342 of the Session Laws of 1905 [shall] be amended to read as follows: Sec. 2. Any corporation or receiver operating a line of railroad in whole or in part in this State who shall knowingly violate any provisions of this act shall be liable to the State of Kansas for a penalty of not less than one hundred dollars nor more than two hundred dollars for each offense, and such penalties shall be recovered and suits thereof shall be brought in the name of the State of Kansas in a court of competent jurisdiction in any county in the State into or through which any such railroad may run, by the attorney-general or under his direction, or by the prosecuting attorney of the proper county through or into or out of which trains may be operated by said company; and upon complaint being made to the commissioner of labor, he is hereby authorized to investigate such complaint, and shall be empowered to examine the train sheets, registers, and dispatchers' reports, and to hear such other evidence as may be offered by officers or employees of such railroad company to determine whether such complaint is well founded; and if the complaint appears to be well founded, it shall be the duty of said commissioner of labor to file a complaint before the county attorney of the proper county through which said company may operate.

Approved March 9, 1907.

CHAPTER 281.—*Liability of railroad companies for injuries to employees.*

(See pp. 63, 64, above.)

CHAPTER 283.—*Railroads—Shelters for workmen.*

SECTION 1. It shall be unlawful for any railroad company or corporation or other persons who own, control or operate any line of railroad in the State of Kansas to build or repair railroad equipment at division points where shops are located without providing sheds over the tracks exclusively used for such repair work, so that all men permanently employed for such repairs may be under shelter during storms or other inclement weather.

SEC. 2. Every corporation, person or persons, manager, superintendent or foreman of any company, corporation, person or persons, who shall fail or refuse to comply with the provisions of this act after the 1st day of September, 1907, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense.

Approved March 7, 1907.

CHAPTER 402.—*Mine inspectors.*

SECTION 1. The secretary of the State mine industry, who shall be State mine inspector, shall receive a salary of fifteen hundred dollars per annum, and actual necessary expenses, not exceeding one thousand dollars. The said State mine inspector is hereby authorized to appoint one deputy mine inspector for each of the following counties: Crawford, Cherokee, Osage, Leavenworth, and one additional deputy mine inspector for the counties of Crawford and Cherokee. Each of the said deputy mine inspectors shall be required to give his full time to such employment, and shall receive as compensation the sum of eighty dollars per month and necessary traveling expenses. The said State mine inspector is hereby authorized to appoint a clerk for his office, who shall receive an annual salary of seven hundred and twenty dollars. Said deputy mine inspector and clerk shall be under the supervision and control of the State mine inpector and hold their positions at his pleasure. He shall be authorized to transfer the deputy inspectors to such points within the State where in his judgment the duties and requirements of the inspection law make it necessary for them to work. The term of the State mine inspector and his deputies and clerk shall be for a period of two years, beginning July 1, 1907, and their salary and expenses shall be payable monthly upon vouchers certified to the State auditor by the State mine inspector.

Approved February 21, 1907.

CUMULATIVE INDEX OF LABOR LAWS AND DECISIONS RELATING THERETO.

[This index includes all labor laws enacted since January 1, 1904, and published in successive issues of the Bulletin, beginning with Bulletin No. 57, the issue of March, 1905. Laws enacted previously appear in the Tenth Special Report of the Commissioner of Labor. The decisions indexed under the various headings relate to the laws on the same subjects without regard to their date of enactment and are indicated by the letter "D" in parenthesis following the name of the State. Opinions of the Attorney-General on the construction, etc., of labor laws are similarly indexed, and are indicated by the abbreviation "Op." in parenthesis.]

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