DEVELOPMENT AND ADMINISTRATION
OF
WORKMEN'S COMPENSATION

WITH SPECIAL REFERENCE TO KANSAS

By

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CHAPTER I

THE EMPLOYERS LIABILITY SYSTEM

At common law it is the employer's duty to use ordinary care in providing for the safety of his employees. That duty includes: (a) the duty to provide a reasonably safe place to work; (b) the duty to warn employees of the dangers of the employment; (c) the duty to provide reasonably safe equipment; and, (d) the duty to be reasonably careful in hiring competent fellow-servants. In case of accident arising because of failure to observe these rules, the employee is entitled to recover "damages" for his injuries through the usual legal proceedings. This right of action is based upon the negligence or fault of the employer. It is the fundamental principle of the common law system.

The cases where an injured workman can hope to succeed in a common law action for negligence are very few. The employer has certain defenses to any common law action. The basis of these defenses are the three common law principles, the law of contributory negligence, the fellow-servant rule, and the doctrine of assumed risks.

Contributory negligence refers to the negligence of an employee which is a direct or proximate cause of his injury. Through interpretation of the courts, the condition now exists that to recover damages for injuries received, the injured workman must not only prove the negligence of the employer but also that he himself did not contribute to the injury.

The fellow-servant rule establishes the precedent that no workman may recover compensation for any injury received if the injury was caused by the negligence of another workman in the same business. The only limitation is that the employer must use ordinary care in selecting his servants.

Under the doctrine of assumed risks, each servant is considered to have assumed the "ordinary" risks of the industry. It is presumed that the employee is able to foresee the hazards of the employment which he undertakes. This is usually applied by court interpretation to extraordinary risks which the employee may not be able to foresee as well as those of which an ordinary understanding would give knowledge.

To succeed in an action at common law, accordingly, an injured workman must be prepared to show that

the accident was caused by the employer's negligence; that no negligence on his part contributed to the accident; that the risks of the business were unknown to him and not assumed by acceptance of the position; and, that negligence of a fellow-servant did not contribute to cause the injury. From this common law basis has been evolved our present system of employers' liability laws.

The concept of personal fault is the keystone in the employers' liability system as it is in the common law rulings. The basis of the system lies in the theory that losses incurred through industrial accidents should be suffered by the person injured unless he can shift direct responsibility for the accident to some other person. If such personal responsibility can be proved, the guilty party must pay damages which are supposed to compensate for the loss sustained.

The first employers liability act in Kansas was passed in 1874. (Laws of Kansas, 1874, Chapter 93, Section 1). The law provided that all railroads or other common carriers should be liable for injuries to their employees where such injuries were due to the negligence of the employer or his agents. This did

not apply to negligence between co-employees.

The law was amended in minor details in 1903, 1905, 1907, and 1909. These changes referred to requirements for time and manner of filing the notice required of the workman. In 1911 the law was further amended, requiring certain standards of equipment and safeguards. Failure to observe these requirements was considered prima-facie evidence of negligence on the part of the employer. When the employer was guilty of violation of the law in regard to equipment, he was not allowed to plead the defenses of contributory negligence and assumption of risk of employee. Thus the modification of common law rulings by the employers liability system consists mainly in removing the burden of proof of negligence from the employee in those cases where the employer has violated the law. The liability of the employer, however, still must be established by means of a suit at law. The courts still must be guided by the rules of negligence law to determine legal liability, and this may or may not agree with justice and moral liability.

The defects of the system of employers liability may be summarized from the standpoint of each of the three parties concerned--the employee, the

employer, and Society.

The employee's criticism: (1) The burden of proof lies upon the employee to establish the negligence of the employer. In the light of our present industrial system, accidents are chargeable to conditions, not to men. Thus the law of negligence has no place in determining responsibility. (2) A large percentage of industrial accidents are uncompensated, and the workman or his dependents must bear the resultant economic loss. (3) The compensation, if received, must be considerably reduced by litigation expense. In order to recover damages the plaintiff must engage a lawyer and go through the usual legal proceedings. These fees confiscate a considerable portion of the gross amount--if received. The workmen is usually unable to retain an attorney except on a contingent fee basis, and this factor adds greatly to the portion accruing to legal costs. (4) Delay in litigation results in postponment of help at the time when it is actually needed. The courts are overloaded with cases, and when the delay of appeal is added to this, the time spent in reaching a verdict sometimes totals several years. (5) Where compensation is obtained, it bears no true relation to

economic need. The greatest part of the accident loss is suffered by the workmen. The majority receive no compensation, and in only a very small number of cases do the employees receive an amount that is commensurate with their loss.

The employer's criticism: (1) The employer must spend large sums in litigation expenses, and only a small part of the money paid reaches the injured man. The employer must either maintain a claim department or employ outside help to defend his claims. (2) In cases where the employee is able to establish his case, the amounts usually are excessive. (3) Litigation leads to trouble and ill-feeling between employees and employers. Whether or not the claims result in law-suits, the employee feels that he is entitled to damages for injuries incurred, and the employer usually feels that any aid he may give is not a matter of duty but rather of generosity.

Society's criticism: (1) The cost of hearing negligence cases represents a large part of the cost of maintaining the courts. Estimates have been made that on the whole approximately one-half of the time of the courts is devoted to this form of litigation. (2) Uncompensated injuries increase poverty

and destitution. This burden must be borne by society through charities, etc.

The idea of liability for accidents does not fit in with our present industrial system. The old methods of industry and the ancient relation of employer and employee no longer exist. The development and improvement of modern industry, the complicated division of labor and the relative static position of employers liability laws has resulted in a condition which is unjust both to employer and employee. Thus we have the happy situation of promulgating an idea not for one party as against another, but in the interest of all parties concerned.

The next logical step is to seek a remedy. Will this be found in amending the old system or in devising a new one? History has shown that attempts to mold the common law principles into a just system is impossible, and that an ideal solution demands the removal of this body of law from the suggested remedy. As a matter of fact, aside from history, there is no economic justification for distinction between injuries caused by negligence and those pertinent to the industry. Justice demands that the financial burden

of compensation be borne by those who are best able to bear it, and that the payment of compensation become automatic instead of a matter for a law-suit.

To meet this radical change there has been devised an entirely new scheme--Workmen's Compensation. Founded on the arguments of expediency and justice, the principle has been developed throughout the industrial world.

CHAPTER II

EXPLANATION AND EARLY HISTORY OF WORKMEN'S COMPENSATION

Workmen's compensation embodies an ideal of social justice entirely foreign to the philosophy expressed by the laws in which the idea of "damages" is basic. The legal relationship between employer and employee is changed completely. The employer becomes liable to pay compensation to an injured workman, or to his dependents in case of death, although there has been no illegal act or negligence on the employer's part or on the part of any of his agents. The burden of proof of negligence is removed from the employee, and his right of compensation will not be abrogated except in the case of "serious and willful misconduct." To the employer the doctrine of contributory negligence no longer is a defense; the fellow-servant rule is of no avail; and to prove that the risks of the business were assumed is a waste of time.

Broadly considered, industrial accidents are nobody's "fault" in a personal sense. No employee tries to kill himself, and no employer tries to maim his

employees. It is true that every accident may be traced to some mishap, lack of attention, skill, or perhaps care, but these things arise mainly because man is only human and subject to error. Not all accidents are inevitable, it is true, and preventive measures against accident and disease are of primary importance. In the main, however, injuries are inherent hazards of industry.

Accidents, according to the modern idea, are considered to be a part of the process of production. This does not mean that either the employer or the employee must bear the burden of accident. Accidents are an inevitable part of our industrial regime. They should, therefore, be included in the expenses of production.

This principle places the cost of accidents in the same category with wages, machinery, and materials. The employer is merely the instrument by which the system functions. It is his part in the process to assemble the instruments of production, and to recover the expenses thereof in the price of the product. If he is held legally responsible for accidents, he will protect himself by incorporation of the prevalent costs of industrial injuries in the price of his product.

The loss from industrial accidents will thus be borne by the consumer of the article, the production of which has caused it. This principle secures a wider and much more equitable distribution of such costs. If the selling price of the article, with the added cost, becomes prohibitive, the best step to take would be to discontinue the industry, unless there are grounds which would warrant government aid. If the industry is socially desirable, the consumers will make good the wage-loss expended by the price they are willing to pay for the finished product.

Workmen's compensation also involves medical and surgical care of the injured. Every year industries must set aside as a part of operating costs a certain percentage to keep machinery in repair. This cost is charged in the expenses of production and is ultimately paid by the consumer. According to the modern idea, it is no more justifiable to discard an injured workman than it is to refuse to repair damaged machinery.

These are the principles of workmen's compensation, and the grounds upon which they are justified. The laws may differ in scope and method throughout different jurisdictions, but they all hinge on the principle of providing compensation for injury regardless of

personal fault. The industrial world has adopted the system quite generally, conforming to this new principle.

Each country has passed through comparatively the same stage of development before workmen's compensation has been adopted. At first "liability laws" were passed to facilitate the collection of damages. These laws were inadequate, and, more than anything else, expressed the recognition of existing defects. Finally a conviction has come of the necessity for a radical change. This has led to the gradual adoption and extension of workmen's compensation. The general condition has finally obtained to shift the burden of industrial accidents from the employee to the industry.

Germany was the pioneer in this struggle against this economic loss arising out of the modern wage system. Like other countries, Germany passed through a long period of "liability legislation" before workmen's compensation was adopted. The first act of that nature was passed in 1838 and made railroad companies liable for accidents to employees and passengers.[1]

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[1] Frankel & Dawson, Workingmen's Insurance in Europe.

later laws in 1845, 1849, and 1854 were passed to encourage organizations of the workmen for accident relief. In 1871 the original act of 1838 was extended in scope to include accidents incurring in a mine, pit, quarry or factory. In all these cases, however, the burden of proof was on the employee to prove non-contributory negligence and non-assumption of risk. Conditions were unsatisfactory and after much agitation a bill was passed in 1884 providing for the new principle of workmen's compensation.

This bill provided for sickness as well as for accidents. The employers, and the employees with a subsidy from the State were to establish an insurance fund. From this fund the first thirteen weeks of disability from accident was to be compensated. At present the law has been extended to include practically every industry. The injured workman receives payments from the date of injury in proportion to his wages. Pensions are paid to dependents. Two-thirds of the cost for the first thirteen weeks is taken from contributions made by the workmen to the insurance fund. After that time, payments are made by mutual trade associations maintained by employers.

England has had much the same experience as Germany. Her comparatively greater development of Laissez-faire and individualism, however, has retarded the enactment and limited the scope of such laws. In Germany the monarchial form of government made it a problem of the state to provide for its citizens.

The English Employers Liability Act of 1880 was the first attempt in England to provide for some control of the problem. It modified the doctrines of common employment and of assumption of risk. The amount of damage was limited to three years' wages of a person in a similar grade of employment. The employee carried the burden of proof of negligence. Employers, in addition, developed the practice of requiring a contract from the employee which relieved the employer of all liability, and thus the act was a failure. No other act was passed until in 1897 when the Conservatives were successful in passing the first workmens compensation act.

The scope of this act was limited to employment in railway, factory, mine, quarry, engineering-work, or construction work. The employer became automatically responsible for all accidents except those due to "serious or willful misconduct" of the employee and

those which did not cause over two weeks' disability. Definite scales of compensation were provided for death and for differing degrees of disability.

Through later amendments the act has been extended to cover all workers earning £ 250 or less. The waiting period has been reduced to one week; the defense of "serious and willful misconduct" has been removed where death or permanent disability results from the accident; and, provision has been made for periodical payments of the compensation awards.

The development in England and Germany is representative of the development in other countries. The new principle has taken hold and has gradually become the guiding principle. Defects still exist, but efforts are extended to correct those defects that further development may be in line with the same principle--workmen's compensation.

The adoption of the workmen's compensation principle in the United States was preceded by the same struggle, involving many statutory changes in the common law system relating to labor conditions. Early attempts to better the workingmen's conditions usually took the form of laws which either fixed the standards of conduct in cases where the common law requirements

were vague or abolished the rules of common law in cases where such action seemed necessary.

The main factors which have retarded labor legislation in this country are the lack of uniformity and the condition of unconstitutionality. States must pass legislation which is effective only within their own borders, and, as all legislators have different ideas of the labor situation, the result has been a wide diversity in the nature of the legislation attempted.

The difficulty of unconstitutionality arises from the contention that such legislation necessarily favors one class as against other classes. Furthermore, each state hesitated to place any burdens on its employers which would put them at a disadvantage with the employers in other states. It was easily seen that any such system meant an added element of cost in the cost of production, and that the final cost would thus be greater in states which had a compensation system than in states which had not adopted such a system. Thus the adoption of the system was postponed until employers in all states were convinced that a change was necessary.

The first legislation based on the compensation

principle was an act providing for a co-operative accident insurance fund in Maryland in 1902.[2] The law applied only to mining, quarrying, steam and street railway service, and to municipal operations in connection with sewers, excavations, or physical structures. The employers' liability was construed to include the negligence of a fellow-servant, and only one-half damages were to be paid if contributory negligence could be proved. Payments were made from a fund contributed to by both employers and employees. Very few employers chose to become subject to the law, and it was declared unconstitutional the first time it was challenged in court.

Several other attempts were made by States, although no other laws were passed until in 1908 when Massachusetts passed a law merely authorizing private plans of compensation.

Momentum was given to the agitation by the Federal Act of 1908. This act applied the compensation principle to certain classes of government employees. Those included were laborers in manufacturing establishments, arsenals or navy yards, construction work,

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[2] Chapter 139, Acts of 1902.

and in hazardous employments in reclamation of arid lands or under the Isthmian Canal Commission. Amendments of 1911 and 1912 extended the scope of the act to the Bureau of Mines, and Forestry, and Lighthouse Service.[3]

Compensation in the amount of full wages was provided for a period of one year after the injury, providing it lasted that length of time. No compensation was allowed where injury was due to negligence of employee, or if the disability did not last more than fifteen days. In case of death, certain dependents were specified to receive the compensation during the allowed one year period. The law was administered by the Secretary of Labor.

The law was notoriously inadequate but it definitely committed the federal government to the compensation principle. This was a valuable precedent to the States. Other attempts by the States to establish the workmen's compensation principle during this time had resulted in failures due to declaration of unconstitutionality. Montana passed a law in 1909 [4]; New York

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[3] 36 Statutes at Large 1363; 37 Statutes at Large 74; 37 Statutes at Large 238-39.

[4] Chapter 67, Laws of 1909

in 1909 [5]; and Maryland in 1910 [6]. All were unsuccessful.

Beginning with the year 1909, however, interest in compensation has grown rapidly. The first laws to stand the test of constitutionality were passed in 1911, and in a period of less than six years, the larger part of the United States, territorially, was under the compensation principle. In every state prominent industrially there is now a compensation law in force. The principle is in operation nearly all over the United States as an accepted system. The States which have no compensation laws are Arkansas, North Carolina, South Carolina, Mississippi and Florida.

The state law which has been longest in force is that of New Jersey, which went into effect July 4, 1911. Kansas and Washington both passed laws at an earlier date (March 14, 1911) than New Jersey, but they did not go into effect until the following January 1, and October 1, respectively. Other states passing laws in 1911 were Massachusetts, Ohio, New Hampshire, and Wisconsin.

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[5] Chapter 518, Laws of 1909.

[6] Chapter 153, Laws of 1910.

Public opinion has developed with the legislation until now no one with any knowledge of the subject objects to the general principle. Criticism is rather directed at details and methods. With this in mind, the rest of this thesis will be devoted to a study of the laws and the comparative development in Kansas.

CHAPTER III

THE ACT OF 1911

The first compensation law in Kansas was passed March 14, 1911, and became effective January 1, 1912.[7] It was entitled "An act to provide compensation for workmen injured in certain hazardous industries." Abolition of defenses; Election of remedies:

Previous to this date the chief objections retarding workmen's compensation legislation were the hindrance of unconstitutionality and the hesitation of employers to accept the system. A decision by the New York Court of Appeals in the case of Ives versus South Buffalo Railway Company [8] established the precedent that a mandatory compensation law was unconstitutional. The Kansas law of 1911 to avoid this objection provided for an optional system of compensation. Its acceptance was optional with the employer and the employee.

Employers might elect to come under the provisions of the act by filing a statement to that effect with the Secretary of State. This statement bound the employer for the term of one year, and for successive

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[7] Laws of Kansas, 1911, Ch. 218.

[8] 201 N. Y. 271

one year terms without any further act of the employer, unless sixty days prior to the expiration of any of these terms he filed a similar notice of withdrawal. Withdrawal notices also must be posted in and about the place where his business was carried on. (Sec. 44).

Election by the employee, on the contrary was negative in method. He was presumed to have accepted the compensation principle unless he served written notice to the contrary upon the employer. Election afterward could be changed only by the same procedure. A contract of the employer requiring non-election of an employee, as a condition of employment, was void. (Sec. 45).

To induce employers to accept the statute, provision was made that their common-law defenses were eliminated unless they did adopt the compensation principle. Any employer who might bring himself within the terms of the Compensation Act, and who failed to do so, could not plead the common-law defenses of assumption of risk and of the fellow-servant rule. The defense of contributory negligence likewise was not allowed, although it was considered by the jury in the assessment of damages. (Sec. 45).

In the event that the employer elected to come

within the terms of the act, but the employee did not, the employer could avail himself of the common-law defenses and the doctrine of contributory negligence. Those defenses did not apply, however, if "the injury was caused by the willful or gross negligence of such employer, or of any managing officer, or managing agent of said employer, or where under the law existing at the time of the death or injury such defenses are not available." (Sec. 47).

The basic election as to whether the compensation principle would govern between the relations of the employer and the employee rested, of course, with the employer. An employee could not bring his employer within the terms of the act unless the employer chose to do so. Even though both should elect to be bound by the principle, the employee might elect between a right of action against the employer and the right to compensation. (Sec. 2). The practical effect of this provision acted to give the employee a right to elect in virtually every case whether he would demand compensation or damages.

This provision obviously was unwise. Even though the employer had elected to come within the provisions of the act and the employee had refused to do so, the

employer still might be precluded from setting up common-law defenses when the injury was caused by his comparative negligence. (Sec. 47). This allowed room for much speculation as to when the employer, in any given cases, might know that his liability was limited by the compensation feature or that he might save his common-law defenses by showing a willingness to pay compensation.[9] There are very few accidents in which it is not possible to allege some negligence on the part of the employer, and thus force him to defend a damage suit. In addition to the trouble and expense this would cause, there was always the certainty that if the damage suit was unsuccessful, the workman could still claim his compensation. He was not, however, entitled to recover both damages and compensation.

The Scope of the Act:

The scope of the act was limited to certain specified hazardous employments within the state and did not apply to employees engaged in interstate commerce. (Sec. 7). Many serious questions have arisen over the right to compensation where an injury has occurred in one State and the employer or the employee

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[9] Kansas Bur. of Labor, 29th Annual Report.

ides in another.

The employments covered were railways, factories, mines, quarries, electric building or engineering work, laundries, natural gas plants, and all employments wherein a process was used requiring dangerous explosives or inflammable materials. (Sec. 6). It applied only to employers by whom fifteen or more workmen had been employed continuously for more than one month at the time of accident, and who had elected to come within the provisions of the act. Employers with less than fifteen employees also might elect to come within the act. (Sec. 8).

The injuries included referred only to personal injury by accident arising out of and in the course of employment. This was subject to liberal interpretation by the courts. The following quotation is indicative of the general attitude: "The only way to construe the act is to read it fairly, taking the words in their common and ordinary signification, and the court ought not to strain the language in order to bring in or to exclude any particular case, however arbitrary or unscientific the line of demarcation drawn by the act may seem to be." [10]

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[10] Hoddinott v. Newton Chambers & Co. 3. W. C. C. 74

Compensation was withheld if the accident arose through the workman's deliberate intent to cause injury; through his failure to use guards or protection furnished him; through his intoxication; or, through breach of statutory regulations covering the case. (Sec. 1). In case the workman was a minor or was mentally incompetent, the right of election to compensation accrued to his guardian. (Sec. 10).

Waiting Period:

No compensation was allowed for accidents within the act, unless the workman was incapacitated for a period of at least two weeks. The compensation began at the end of the second week of incapacity. (Sections 1a, 11b, 11c.)

Medical Attention and Funeral Expenses:

In case of the death of a workman who left no dependents, the employer was required to pay "the reasonable expenses of his medical attendance and burial not exceeding one hundred dollars." (Sec. 11a, 11b.)

Compensation for Death:

If death resulted from the injury the employer was required to pay the dependents of the employee, wholly dependent upon his earnings for support, an amount equal to three times his earnings for the previous year.

A maximum amount of $3600 and a minimum of $1200 was provided. (Sec. 11). The exact amount of the award was to be computed from his average weekly wages received.[11] An exception was made in case the dependents who were not citizens of and residing in the United States or Canada. In such a case, the maximum amount of compensation was $750. [12] If the dependents were only in part dependent upon the workman's earnings, compensation was made as a proportionate part of the above indicated amounts in proportion to the injury suffered by such defendants. This amount was to be determined by agreement.

Compensation for Disability:

Disability may be permanent total, permanent partial, temporary total, or temporary partial. The Act of 1911 made no attempt to define the degrees of disability. It provided that if the incapacity for work resulting from the injury was total, the employer should pay the employee a weekly compensation equal to one-half his average weekly earnings (Sec. 11b), but not more than $15 nor less than $6 a week. The

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[11] See the following section for rule of compensation.

[12] This clause has been held unconstitutional. Vietti v. Fuel Co. 109 Kansas 199.

average weekly earnings were taken as the average rate received by the workman for the fifty-two weeks prior to the accident. (Sec. 12a). In case this was impracticable a comparison was taken from an amount earned by a person in a similar grade of employment. In fixing the amount, allowances were made for earnings from all sources and for compensation previously paid by the employer during the period of incapacity. (Sec. 12b, d, e.)

Compensation for Partial Disability:

If the incapacity for work was only partial, the periodical payments were not to be less than twenty-five per cent nor more than fifty per cent of the employee's average weekly earnings. (Sec. 11c.) The limiting amounts in any case were $3 and $12 a week. If the injured employee was a minor with average weekly earnings of less than $10, the compensation had to be at least seventy-five per cent of his average earnings. In either case of total or partial incapacity, the payments could not extend for a period longer than ten years.

Commutation of Award:

Provision was made that the periodical payments might be redeemed by a lump-sum payment. The

employee, if he could show evidence of insecurity of his compensation payments, could apply for a judgment of eighty per cent of the amount of the payments due him under the award. (Sec. 31). The employer, on the other hand, had the privilege, at any time after six months, to redeem his liability by a payment of eighty per cent of the payments which would become due according to the award. (Sec. 33). At any time within one year from the date of injury, the award could be canceled by the court if it was shown: that the disability no longer existed; that the award was obtained by fraudulent means; that the amount was either grossly inadequate or excessive; or that the workman was no longer a resident of the United States or Canada. (Sec. 29). At any time after one year the award might be reconsidered by the court if either party made an application contending that the employee's disability had increased or diminished. (Sec. 32).

Garnishment:

The award was made free from seizure for debt by garnishment. It was not "assignable, or subject to levy, execution or attachment, except for medicine, medical attention and nursing." (Sec. 15).

Procedure in Administering the Law:

The first step that must be taken after an employee was injured, if he intended to recover compensation, was the giving of notice of the accident and a claim for compensation by the employee or his dependents. The notice of the accident had to be given by registered mail or by delivery to the employer within ten days after the accident. The claim for compensation might be filed not later than six months after the accident or in case of death, within six months after the date thereof. (Sec. 22). The courts were very reasonable in interpreting this clause and failure to serve notice if for a reasonable cause did not act as a bar.

After the injury the employee was obliged to submit, at the request of his employer, to a medical examination. These examinations could be repeated during the compensation period, but the employee was not required to submit himself more than once in two weeks unless so ordered by the court. If the employee desired, he could have his own physician present at the examination. Refusal of the employer to allow the presence of the employee's physician at the examination barred the physician's report as evidence in

case of a dispute. (Sec. 17). If the employee refused to submit to the examination, his right to compensation was suspended until he gave notice of willingness to submit. (Sec. 20). In case the employer and employee could not agree upon the choice of a physician, the court had the power to appoint a neutral physician. (Sec. 18).

The amount of compensation due under the act might be settled by agreement between the parties. (Sec. 23). Any agreements or awards made must be in writing and must be filed in the district court of the county in which the accident occurred. If no agreement could be reached, there were several alternative steps which could be taken. If a committee, representing the employer and employee existed for such purposes, the dispute might be settled by that committee. If either party objected to this procedure, the matter could be settled by a single arbitrator agreed upon by the parties or appointed by the court of jurisdiction. He was not bound by rules of procedure, but was required to be reasonable and fair. His fees were paid by the parties to the arbitration. (Sec. 24). The final resort rested in a suit of action in court. In every such action the right to trial by

jury is waived unless either party demanded a jury trial. (Sec. 36). The act made no provision for an appeal from an award by arbitrators when once it had been made, but the ordinary appeals could be taken from judgments entered after a trial in court. [12] The commissioner of labor was given only advisory powers.

Only in a small minority of the cases which have arisen has it been possible for the parties to reach an agreement. This defect robbed the law of its primary object--to do away with the delay and cost of court procedure. The old common-law idea of "damages" was still basic in actual results and this should be foreign to modern compensation theory.

When an award had been made, the employer became liable for the compensation determined to be paid at the same time, place, and in the same manner as the wages of the workman were payable at the time of the accident. (Sec. 13).

If the employer wished to support a mutual compensation, benefit, or insurance plan in his own establishment, he might do so with the written approval

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[12] Cain v. National Zinc Co., 146 Pacific 1165

of the superintendent of insurance and the attorney general. In that case the provisions of such plan could be substituted for the provisions of this act. The plan had to provide scales of compensation not less favorable to the workmen and their dependents than the scales in this act. If the workmen contributed to a fund, the plan had to provide benefits equal to the contributions and in addition to the compensation provided in the law. (Sec. 39). The superintendent of insurance with the approval of the attorney general had the power to terminate the scheme if at any time it did not fulfill the requirements of the law. (Sec. 41).

It was optional with the employer, likewise, whether he should carry insurance to cover his liability for accidents. If he carried insurance for the payment of compensation to the workmen, the insurance company was subrogated to the rights and duties of the employer under the compensation act. (Sec. 34). No proceedings could be brought against the employer to collect compensation in this case, if he filed a certificate showing that his liability was insured; or, if he filed a bond undertaking to secure payment of the compensation.

Definitions:

The definitions contained in the act are reprinted verbatim. (Sec. 9). "In this act, unless the context otherwise requires: (a) 'Railway' includes street railways and interurbans, and 'employment on railways' includes work in depots; power houses, round-houses, machine shops, yards, and upon the right of way, and in the operation of its engines, cars and trains, and to employees of express companies while running on railroad trains.

(b) 'Factory' means any premises wherein power is used in manufacturing, making, altering, adapting, ornamenting, finishing, repairing or renovating any article or articles for the purpose of trade or gain or of the business carried on therein, including expressly any brick yard, meat-packing house, foundry, smelter, oil refinery, lime burning plant, steam heating plant, electric lighting plant, electric power plant and water power plant, powder plant, blast furnace, paper mill, printing plant, flour mill, glass factory, cement plant, artificial gas plant, machine or repair shop, salt plant, and chemical manufacturing plant.

(c) 'Mine' means any opening in the earth for

the purpose of extracting any minerals, and all underground workings, slopes, shafts, galleries and tunnels, and other ways, cuts and oponings connected therewith, including those in the course of being opened, sunk or driven; and includes all the appurtenant structures at or about the openings of the mine, and any adjoining adjacent work place where the material from a mine is prepared for use or shipment.

(d) 'Quarry' means any place, not a mine, where stone, slate, clay, sand, gravel or other solid material is dug or otherwise extracted from the earth for the purpose of trade or bargain or of the employer's trade or business.

(e) 'Electrical work' means any kind of work in or directly connected with the construction, installation, operation, alteration, removal or repair of wires, cables, switchboards or apparatus, used for the transmission of electrical current.

(f) 'Building work' means any work in the erection, construction, extension, decoration, alteration, repair or demolition of any building or structural appurtenance.

(g) 'Engineering work' means any work in the

construction, alteration, extension, repair or demolition of a railway (as hereinbefore defined), bridge, jetty, dike, dam, reservoir, underground conduit, sewer, oil or gas well, oil tank, gas tank, water tower, or waterworks (including standpipes or mains), any caisson work or work in artificially compressed air, any work in dredging, pile driving, moving buildings, moving safes, or in laying, repairing or removing, underground pipes and connections, the erection, installing, repairing, or removing of boilers, furnaces, engines and power machinery (including belting and other connections), and any work in grading or excavating where shoring is necessary or power machinery or blasting powder, dynamite or other high explosives is in use (excluding mining and quarrying).

(h) 'Employer' includes any person or body of persons corporate or unincorporate, and the legal representatives of a deceased employer or the receiver or trustee of a person, corporation, association or partnership.

(i) 'Workman' means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer, but does

not include a person who is employed otherwise than for the purpose of the employer's trade or business. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents, as hereinafter defined, or to his legal representative, or where he is a minor or incompetent, to his guardian.

(j) 'Dependents' means such members of the workman's family as were wholly or in part dependent upon the workman at the time of the accident. And 'members of a family' for the purposes of this act means only widow or husband, as the case may be, and children; or if no widow, husband or children, then parents and grandparents, or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section parents include step-parents, children include step-children, and grandchildren include step-grandchildren, and brothers and sisters include ste-brothers and step-sisters, and children and parents include that relation by legal adoption."

CHAPTER IV

AMENDMENTS OF 1913 AND 1917

The Act of 1911 was changed by the legislature on March 12, 1913, and again on May 26, 1917. It is the purpose of this chapter to outline briefly the important changes effected by these amendments. After these changes were made the law stood as a complete system until it was revised again in 1927.

Election of Remedies; Abolition of Defenses:

Under the amendment of 1913, the manner of election for the employer was changed from the negative method to the positive method. The employer under this law was assumed to have accepted the act unless he filed a written statement to the contrary with the Secretary of State.[13] Change of election was made by the same procedure. The amendment of 1917 added the provision that employers in non-hazardous employments might come within the act by filing a statement of election with the Secretary of State.[14] Election by the employee was not changed.

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[13] Laws of Kansas, 1913, Chapter 216, Section 7.

[14] Laws of Kansas, 1917, Chapter 226, Section 1.

If the employer did not elect to come within the act, his defenses of assumed risks and fellow-servant fault were abrogated. Formerly the defense of contributory negligence was considered in assessing the amount of damages, but by the amendment of 1917, this defense also was entirely abrogated.[15]

The provision in Section two of the Act of 1911 which allowed the employee to choose between the right to sue and the right to collect compensation was eliminated. The compensation act was made the only remedy where both the employer and the employee were within the act. The effect of this last change was marked. In 1912, under the old law, because of this provision, only 129 employers elected to come within the act. After its repeal in 1913, only 400 of all the employers within the scope of the act gave notice that they would not be governed by the act.[16]

The Scope of the Act:

To the list of specified hazardous employments, the amendment of 1913 added county and municipal work.

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[15] Laws of Kansas, 1917, Chapter 226, Section 25.

[16] 29th Annual Report of Kansas Bureau of Labor, Page 179.

Agricultural industries were declared as being non-hazardous. (Sec. 2). The number of men employed in industries subject to the act was reduced from fifteen to five.[17] Employers with less than five men employed could elect to come within the act. To mines the law was made applicable without regard to the number of men employed. The amendment of 1917 provided also that non-hazardous employments would be made subject to the act, if the employer so elected and there was no objection from his employees. (Sec. 1).

The nature of injuries included was not changed by either of the amendments.

Waiting Period:

The waiting period was reduced by the law of 1917 from two weeks to one week's time. The employer was not held liable for any injury which did not disable the workman for a period of at least one week from earning full wages. (Sec. 27a).

Medical Attention and Funeral Expenses:

Reasonable expenses of physician, hospital, medicine, nursing, crutches, etc., must be provided by

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[17] Laws of Kansas, 1913, Chapter 216, Section 3.

the employer for a period of fifty days. The maximum amount provided could not exceed $150.

Compensation for Death:

The provision for compensation to dependents in case of death of a workman was not changed in amount by the 1913 law. Additional provisions were made to the effect that marriage of a dependent terminated compensation for that dependent but did not affect the others; and, that compensation payments to a minor should cease when he reached eighteen years of age. (Sec. 5a).

The law of 1917 added $200 to the maximum and minimum amounts. The limits were placed at $3800 and $1400. (Sec. 8).

Compensation for Disability:

In the case of total disability the award of one-half of average weekly earnings was left unchanged by the 1913 Amendment, although the time limit was shortened to a maximum of eight years. (Sec. 5). The 1917 Amendment increased the amount to sixty per cent. It also defined permanent disability as constituting loss of the use of eyes, hands, arms, feet, legs, or total paralysis or insanity. (Sec. 3).

The average annual wage if employed for more than one year, was the amount paid in the previous year, undiminished by losses for illness, etc. If the workman had been employed for less than one year, the amount was fixed with reference to the average earnings of another person in the same employment and locality. Credit was allowed the employer for amounts paid previous to the award. If the injury referred to was a second injury, the wages computed must be as of the time of the second injury.[18]

Compensation for Partial Disability:

For partial incapacity the only change made in 1913 was to limit the period of payments to eight years. (Sec. 5). In 1917 a schedule of compensation was set up for disability partial in character but permanent in quality. The minimum amount was increased to $6 a week and the maximum remained at $12 a week. The schedule provided for lump-sum payments as follows:

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[18] Laws of Kansas, 1917, Chapter 226, Section 4.

(1) Loss of thumb, 50% of ave. weekly wages dur. 60 wks.

(2) Loss of 1st finger, 50% of ave. " " " 37 "

(3) Loss of 2nd " " " " " " " 30 "

(4) Loss of 3rd " " " " " " " 20 "

(5) Loss of 4th " " " " " " " 15 "

(6) Loss of first phalange of finger is considered as loss of one-half of finger, and compensation is one-half of amounts specified above. Loss of first phalange and part of second phalange is equal to loss of two-thirds of finger, and compensation is two-thirds of amounts specified above. Loss of first and second phalanges and part of third phalange of any finger is equal to loss of the entire finger.

(7) Loss of great toe, 50% ave. weekly wages dur. 30 wks.

(8) Loss of any other toe, 50% ave. " " " 10 "

(9) Loss of first phalange of any toe is equal to loss of one-half of the toe; loss of more than one phalange is equal to loss of the entire toe.

(10) Loss of hand, 50% of ave. weekly wages dur. 150 wks.

(11) Loss of arm, " " " " " " 210 "

(12) Loss of foot, " " " " " " 125 "

(13) Loss of leg, " " " " " " 200 "

(14) Loss of eye, " " " " " " 110 "

(15) Amputation between elbow and wrist is loss of hand; at or above elbow, loss of an arm.

(16) Amputation between knee and ankle is loss of a foot; at or above knee, the loss of a leg.

(17) Loss of hearing of both ears, 50% of wages dur. 100 wks.

(18) Loss of hearing of one ear, " " " " 25 wks.

(19) For cases not covered by schedule, the amount was to be determined in accordance with the other provisions of the act.

Commutation of Award:

No changes were made in regard to redemption of liability by either the 1913 or the 1917 law.

Garnishment:

Compensation awards remained free from levy, execution, attachment, or garnishment. In addition, it was provided that this exemption could not be waived.[19] Attorney's fees were not a lien unless in written contract and approved by the judge of the court having jurisdiction.[20]

Procedure in Administering the Law:

The steps through which a case must go in settling an award for compensation remained practically the same after the amendments of 1913 and 1917. An additional notice was required of the employee in reporting his injury. He must, under these amendments, send a notice, under the same conditions, to the Secretary of State as well as to the employer. In case of death, the claim had to be presented within three months as compared with six months formerly

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[19] Laws of Kansas, 1917, Chapter 226, Section 5.

[20] Laws of Kansas, 1917, Chapter 226, Section 12.

allowed.[21]

The employee was required to submit to an examination at the employer's request, but the frequency of these examinations was lessened to once in four weeks, unless otherwise ordered by the Judge of the court.[22] The other rights and duties of the employee and employer in regard to examinations remained unchanged. (Sec. 6, 7, 8, 9.)

The manner of settling the amount of the award was unchanged by both the amendment of 1913 and of 1917. The amount was settled by agreement of the parties, if possible. If this failed, any existing arbitration committee or an arbitrator appointed by the judge was empowered to make the settlement, if they had the written consent of both parties. Failure of this method left the final place of settlement in a court without a jury, unless either party demanded a jury. No provision was made for appeal from this final settlement.

Provision for time and manner of payments was

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[21] Laws of Kansas, 1917, Chapter 216, Section 6.

[22] Laws of Kansas, 1917, Chapter 226, Section 7.

not changed under the later laws. No further provision was made for insuring the payments to the employee. It was optional with the employer whether he would enter any mutual insurance plans, or in any other manner insure his contingent liability for compensation. This fact that no security was required of the employer to insure payment of awards to the employee was one of the outstanding weaknesses of the law.

Provision was made for the liability of third parties, where they were the cause of the accident. The employee could collect damages from the third party, or compensation from the employer. If compensation was recovered, the employer was entitled to indemnity from the third party, and was subrogated to the rights of the employee against the third party. (Sec. 5).

A principal contractor subject to the act was held liable for compensation to the employees of the sub-contractor if the injury was sustained on the premises, or in execution of work under the principal's control and management. The principal, however, was entitled to indemnity from the sub-contractor, and might implead him if sued by the workman for

compensation. The employee could recover from either party. (Sec. 4).

No action could be brought outside the State. (Sec. 36).

One addition to the law, approved in 1919, may be mentioned. By this act of March 23, the contract of blind persons with an employer to waive his right to compensation for injury where blindness was the direct cause, was made valid.[23]

With this final change, the body of law stood complete until its revision by the legislature of 1927. To show the workings of the law, an outline of cases referred to the Supreme Court in the settlement of awards will next be presented.

The following chapter will be inserted previous to a discussion of the Act of 1927 because, at this early date, no data in administering the 1927 Law before the Supreme Court, is available. The cases which will be presented refer to the administration of the law as it stood after the amendment of 1917 and until the Act of 1927.

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[23] Laws of Kansas, 1919, Chapter 222, Section 1.

CHAPTER V

KANSAS SUPREME COURT AND THE COMPENSATION LAW

The purpose of this chapter is to show the status of workmen under the compensation law as determined by decisions of the Supreme Court. This involves in the main the abrogation or changes which have been effected in previous common-law relations existing between the employer and the employee.

The cases reviewed by the Supreme Court with reference to this law have been numerous. This was the result of the provisions of the law which fixed no initial means of settlement other than agreement of the parties. It is only natural that with two parties whose immediate interests are so opposite that the final settlement in the great majority of the cases should be carried into the courts. Only the leading cases are outlined, showing the interpretation of the law on the most important points at issue.

The first case reviewed by the Supreme Court was a test of the jurisdiction of a lower court and of the question of constitutionality.[24] Shade was

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[24] Shade v. Cement Company, 92 Kan. 146 and 93 Kan. 257

injured in the employ of the Cement Company, March 13, 1913. Since the law went into effect March 12, 1913, it would be presumed that both the employer and the employee were under the provisions of the law. The employers had elected not to be governed by the act on March 17, 1913. Shade brought action under the Factory Act. The lower court dismissed the case because of lack of jurisdiction, ruling that action should have been brought under the Workmen's Compensation Act. The Supreme Court in review held that the lower court had jurisdiction, and that the case should have been considered under the workmen's compensation law. This established the rule that when at the time of injury both employer and employee not having elected to come under other laws, the workmen's compensation law will govern.

In a rehearing of the case [25] the Supreme Court, in deliberating on the question of constitutionality, ruled that the law was not in violation of the due process clause of the Fourteenth Amendment to the Federal Constitution. The cases used as a basis for the decision were Diebekis v. Link-Belt Company,

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[25] 93 Kan. 257.

261 Ill. 454; and Matheson v. Minneapolis Street Railway Company, 148 N. W. 71. Other cases establishing the constitutionality of the law are listed in the Kansas Reports, Volume 93, page 261.

This rule determining the jurisdiction of the act was further strengthened in the case of McRoberts v. Zinc Company, (93 Kan. 364.) In this case both the employer and employee were within the act, but the lower court awarded a judgment based on the common-law rule of damages. The Supreme Court overruled this verdict and reversed the case because the workmen's compensation law is the only prescribed remedy when both parties are within its provisions.

A question in regard to the elective feature of the act was considered in the case of Smith v. Coment Company, 94 Kan. 501. Smith, the employee, had elected to accept the act, but brought suit for damages under the Factory Act. The employers had elected not to come under the compensation act. The court ruled that this action gave the employee the right to sue under the Factory Act. This was affirmed by the Supreme Court. Where either employer or employee rejects the act no action can be sustained under it.[26]

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[26] 94 Kan. 503.

They further ruled that the Factory Act was not repealed by the compensation law, but that it could only be used in case one party had elected not to be governed by the compensation act.

The case of Swoder v. Flour Mills Company established the rule that an injured person cannot recover both compensation and damage. The prohibition relates, however, only to the payment of money, not to the recovery of judgment. The employee can try in an action before he makes his election.[27]

The provision to eliminate the defenses of assumption of risk and of contributory negligence when the employer elects not to come within the act is questioned in the case of Spottsville v. Cement Company. (94 Kan. 258). In the first trial Spottsville, the employee, was awarded a judgment of one dollar but was later granted a new trial. This second decision awarded Spottsville $3000 compensation. The Cement Company appealed from the decision on the grounds that their defenses of contributory negligence and assumption of risk were denied, except in mitigation of damages. The Supreme Court upheld the decision of the lower court.

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[27] 103 Kan. 378.

This established the rule that employers may not use the defenses of contributory negligence and assumption of risk unless they have elected to come within the law, except in mitigation of damages.

The constitutionality of this rule is questioned in the cases of Hovis v. Refining Company, (95 Kan. 505), Potocan v. Coal Company, (120 Kan. 326), and Swoder v. Flour Mills Company, (103 Kan. 378). The contention was that to deny these defenses to an employer and to allow them to an employee is unconstitutional. The Supreme Court held that such a contention was invalid. The decision was based on the case of Borguis v. Folk (147 Wis. 327).

The case of Gorrell v. Bottelle (93 Kan. 370) established the rule that payment of compensation may be made in a lump-sum payment. Gorrell was injured and lost the sight of his eyes to such a degree that he was incapable of working. The court ruled that his compensation should be at the rate of $6 a week for eighteen weeks and at the rate of $3 a week for the remainder of the eight year period, and that this payment should be made in lump-sum. The Supreme Court affirmed the ruling.

There are other cases on the same question. The

case of Godwin v. Packing Company (104 Kan. 747) affirmed the rule established by the case of Gorrell v. Bottelle. In addition it was ruled that when the injury is not objectively ascertainable no lump-sum award may be made. Cain v. Zinc Company (94 Kan. 679) further substantiated the rule that courts may award either in lump-sum or in periodic payments. The case of Gilmore v. Mining Company (111 Kan. 158) ruled that lump-sum awards might be made only by the courts or by mutual agreement. In the case of Roper v. Hammer (106 Kan. 374) the court decided that the arbitrator was not given power to make a lump-sum award.

The amount of compensation which may be awarded has been questioned in many cases. The case of Vietti v. Fuel Company considered this phase (109 Kan. 179). It also ruled that Section 3 of the act was unconstitutional. This section provided that the maximum amount of compensation which alien dependents might receive is $750.

Victor Vietti, eighteen years old, and son of unnaturalized Italian parents who had been residing in Kansas during sixteen years prior to the accident, was killed in the employ of the Mackie Fuel Company.

The parents were awarded $3,435.12 damages by the Cherokee District Court. The case was appealed to the Supreme Court on the ground that damages could not exceed $750 under Section 3 of the law.

The Supreme Court in considering the question ruled that Section 3 of the law was contrary to the spirit of the treaty between the United States and Italy, and consequently was unconstitutional.[28] The treaty between Italy and the United States provides among other things that the citizens of each country, when within the jurisdiction of the other country, shall enjoy the same privileges under negligence laws as is given to citizens of the country.[29] This treaty is a part of the constitutional law, and is, therefore, binding on the courts, and must be given preference to state law. The Supreme Court also added that the statute was in contravention of the Fourteenth Amendment of the Federal Constitution, which provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The parents of Vietti were residents and were

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[28] 109 Kan. Reports, page 182.

[29] 38 U. S. Statutes 1670.

therefore entitled to compensation. Confirmatory cases: Wong Wing v. the United States (163 U. S. 228), The United States v. Wong Kim (169 U. S. 649).

The case of Stefan v. Elevator Company (106 Kan. 369) brings out a decision that is probably the most unusual verdict given in regard to the amount of compensation which may be awarded. Stefan was injured in the employ of the Red Star Mill and Elevator Company in Sedgwick County in 1917. His injuries resulted in partial paralysis and also in permanent injury to one eye. The injury to the eye was such that it caused double vision and hence it was necessary to keep the injured eye closed in order that there might be sight from the other.

The Miller's Mutual Casualty Company were surety for the Elevator Company and began payments to Stefan. They stopped payments after a short time, and after a refusal to grant Stefan's request for arbitration, Stefan sued his employers. He received a verdict for $3,296.40. The employers appealed.

The lower court made the award on the basis of the paralysis of Stefan and gave no consideration to his eye defect, on the ground that payment of compensation for one injury stops payment for

another. The Supreme Court affirmed the award already given, but held that it was insufficient. They ruled that an employee was entitled to recover compensation for each specific injury contributing to his disability. In referring to the lower court's opinion, they said:

"The legislature evidently believes the loss of a specific member or organ deserved the compensation stated, whatever else occurred. If, however, additional injury should increase the workman's partial disability, either permanently or temporarily, he should receive additional compensation." [30]

In this case the court ruled that the amount of compensation could not be determined by the schedule of rates for disability. Section 19 of the act provides for this exigency:

"In case of partial disability not covered by schedule the workman shall receive during such period of partial disability, not exceeding eight years, sixty per cent of the difference between the amount he was earning prior to said injury as in this act provided and the amount he is able to earn after such

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[30] 106 Kan. 373.

injury."

The limitations that apply are a minimum of $6 a week and a maximum of $12 a week. This provision allows in some cases a recovery of a greater amount for partial disability than for total disability.

Such a rule was first established in the case of Close v. Mining Company, (105 Kan. 257). The court recognized by decision that the loss of a member in some instances might cause less incapacity for work than an injury thereto.[31]

This rule is followed by the Supreme Court in other cases, but with dissenting opinions.

In Emry v Cripes (110 Kan. 693) the employee brought suit for injury to his hand, and was awarded compensation of fifteen hundred dollars ($1500). The injury was regarded by the courts as a permanent partial injury and award was made on the basis of 50-75% incapacity. The award for total disability is 50% of the average weekly earnings for eight years. In this case, the wage being twenty dollars,

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[31] 105 Kan. 258.

the award should have been $\frac{1}{2}\left(\frac{8 \times 52 \times 20}{2}\right)$ (on a 50% basis) or $2080.

The employers appealed on the ground that the award was too large, and the employee on the ground that it was insufficient. The Supreme Court ruled that, as in the Stefan case, the award was illegal and that the 60% rule should operate.

The same position was taken by the Supreme Court in the case of Anderson v. Refining Company (111 Kan. 314) with dissenting opinions in this case also. The Stefan rule is followed, however, although this does allow in some cases a greater award for partial disability than for total disability.

The most numerous cases which have arisen under the act have been cases questioning the scope of the act in particular instances. Some of these instances referring to kind of employments included are cited with a summary of the opinion in each case.

Recoveries can be had only in industries designated "especially dangerous." The injury need not arise from an exceptionally hazardous device or method. (Monson v. Botelle, 102 Kan. 208). Clerical employees in city clerk's office are not within the act. (Udey v. City of Winfield, 97 Kan. 279).

An oil well or a gas well is not a "mine" within the purposes of the act. (Hollingsworth v. Berry, 107 Kan. 544). Agricultural pursuits and employments incident thereto are exempt from the act. (Bevard v. Coal Company, 101 Kan. 207). If there are less than five employees in an industry, it cannot be considered as being within the act. (Hollingsworth v. Berry, 107 Kan. 544; McIlvain v. Oil and Gas Company, 110 Kan. 266, and Stover v. Davis, 110 Kan. 808). Several decisions have been made placing specific employments as outside the act: Construction of a sewer by a city is without the act (Roberts v. City of Ottawa, 101 Kan. 228); a police officer killed on duty is not entitled to the benefits of the act (Griswold v. City of Wichita, 99 Kan. 502); the same, in regard to an independent contractor (Monghlelle v. Mining Company, 99 Kan. 412); Street resurfacing work is not within the act (Gray v. Sedgwick County, 101 Kan. 195); nor is motor-transportation (Dodson v. Sales Company, 110 Kan. 481).

The application of the act in specific cases and to different kinds of injuries, also, has raised many questions. The following section gives a list of a few of the most interesting decisions on this point:

A workman injured while going from one mine to another is held to be without the act. (Bevard v. Coal Company, 101 Kan. 207). Accidents, to be subject to an award, must have happened "on, in or about" the operating plant and this must be within the zone of danger. (Alvarado v. Rock Crusher Company, 109 Kan. 192). A truck driver while delivering meat not "on, in, or about" the plant is without the act. (Hicks v. Swift & Company, 101 Kan. 760). Aliens may sue under the compensation law. (Wolf v. Packing Company, 105 Kan. 517); (Vietti v. Fuel Company, 109 Kan. 179).

A great number of the cases may be classed as unusual. The question arising in most of these cases was one of interpretation of the intent of the law.

A laborer incapacitated as the result of an assault made upon him by his foreman, cannot recover compensation unless his employer knew or anticipated that injury would result if the men continued working together. (Pevvy v. Contracting Company, 112 Kan. 637); (Romerez v. Swift and Company, 106 Kan. 844). A workman who has long been suffering from epilepsy cannot recover for injuries incurred during an epileptic fit coming on him while he was working. (Cox v.

Refining Company, 108 Kan. 320). An existing disease, however, aggravated by conditions of employment and causing disability entitles the sufferer to compensation. (Vassar v. Swift & Company, 104 Kan. 198); (Blackburn v. Brick and Tile Company, 107 Kan. 732); (Hoag v. Laundry, 113 Kan. 513). Where a workman is injured by a playfire act of a fellow-employee, he is entitled to recover compensation. (Stuart v. City of Kansas City, 102 Kan. 307). A workman who was injured during the noon intermission while riding on a truck, at play, may recover compensation. (Thomas v. Manufacturing Company, 104 Kan. 432). An overheated workman drinking ice water--death resulting--is held within the act. (Gilliland v. Zinc, 112 Kan. 39). Incapacity resulting from unskilled medical treatment is not within the act. (Ruth v. Witherspoon-Engler Company, 98 Kan. 179). Refusal to submit to surgical operation is held as a refusal of compensation privileges, although the employer is not released from his liability. (Strong v. Iron & Metal Company, 109 Kan. 117).

CHAPTER VI

THE ADMINISTRATION ACT OF 1927

The latest change made in the workmen's compensation system in Kansas became effective on June 30, 1927, through an act approved on March 14, 1927. Procedure in administering the law:

The administration of the law is taken from the Courts and is placed in the Public Service Commission under the immediate control of the Chairman of Labor. He is named "the Commissioner of Compensation." (Sec. 33). Experience has shown that this results in practically immediate settlement and the elimination of costly litigation.

Notice of the accident must now be given by the employee to the employer, and to the Commissioner of Compensation. Actual knowledge of the accident by the employer or his agent renders the giving of notice to him unnecessary. (Sec. 19). No proceedings may be started unless notice is served within 90 days from the accident or six months after death. If the claimant is disabled, no time limitation has effect until the disability is removed. (Sec. 20.)

The Commissioner of Compensation holds all

hearings in the county where the accident occurred unless the parties mutually agree otherwise. (Sec. 34). The Commissioner is given the powers necessary to carry out the procedure. Settlement of award by agreement is still provided in cases where it is possible. (Sec. 21). The Commissioner supervises all agreements. In cases where arbitration is necessary, the Commissioner hears the claim and makes the award. (Sec. 22). This provides immediate means of settlement and the workman gets all the money and at the time when it is most needed.

The Commissioner is allowed a regular fee where arbitration is necessary. The maximum fee, if not fixed by the consent to arbitration cannot exceed $10 a day with a limit of five days, inclusive also of disbursements for expenses. (Sec. 36). The fees are to be apportioned between the parties as the Commissioner wills. On this basis, it is expected that the department will be self-supporting, although at the end of the first half year's experience this expectation has not been realized.[32]

There is no technical procedure which must be

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[32] Report of Commissioner of Compensation.

followed in making an award. The only requisite is that each party must be given reasonable opportunity to be heard. (Sec. 23) The cost to the employers and the employees under the new system has been decreased approximately $73,000 per year.[33]

The same rules of examination hold under this law. In addition, it is provided that if the employee is called out of the city for an examination, he need not submit until he receives funds for transportation and $3 additional per diem for expenses. He cannot be held responsible for the physician's fees. (Sec. 15).

The 1927 law is the first to provide for an appeal from a decision. The appeal must be made within twenty days after the Commissioner's decision. The District Court will consider the appeal. (Sec. 42). No proceedings will be allowed to change an award after a lapse of one year's time after approval by the Commission.

Provision for payment of the awards is supervised by the Commission. In case of default by the

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[33] Report of Com. of Labor.

employer, the Commission will enforce the employee's right. (Sec. 41).

The provisions in regard to subcontracting and rights against third parties remain the same, except that the employee must elect within ninety days which party he will proceed against. This is to give the employer an opportunity to protect himself against the third party. (Sec. 4).

Election of Remedies; Abolition of Defenses:

The manner of election both by the employer and the employee remains unchanged. All election forms must be filed in the office of the Commissioner instead of with the Secretary of State, as formerly was required.

Defenses under the act remain the same.

The Scope of the Act:

The new system is extended to cover <u>all</u> accidents "arising out of and in the course of employment", whether or not they occurred "on, in or about the premises." (Sec. 5). It further extends the system to apply to accidents occurring in another state if the contract of employment is made in Kansas. (Sec. 6). It adds "motor transportation lines" to the list of specified hazardous employments. (Sec. 5).

The law still applies where five or more workmen are employed. "Building work" is added to "mines" as being considered hazardous employment regardless of the number employed or the length of time. (Sec. 7).

Waiting Period:

The waiting period of one week is not changed.

Medical Attention and Funeral Expenses:

As under previous laws, the employer is required to give medical and surgical aid, but the maximum now is $100 for a period of sixty days. In extreme cases, the commission may require additional aid in an amount not in excess of $100. If the employer refuses to furnish a physician, the employee may secure one and the employer will be held liable for his services. In case the physician hired by the employer is unsatisfactory to the workman, the Commission is empowered to appoint another. (Sec. 10).

Compensation for Death:

The computation of the amount under this provision remains unchanged. The limits of the award are placed at a $4000 maximum and a $1400 minimum. The Commission is given the power to determine the degree of dependency in case of partial dependency. (Sec. 10b).

Compensation for Disability:

For total incapacity, the award is computed as under the 1917 Law. The only change made in this provision is to raise the weekly maximum award from $15 to $18.

In case temporary total disability is followed by temporary partial, a provision is added to award sixty per cent of the difference between the average weekly wages before the accident and the average weekly wages during partial disability. The maximum of $18 and the minimum of $6 do not apply. The time limit for payments under this award is four hundred fifteen weeks. (Sec 10c).

In cases of partial incapacity, also, the maximum weekly award is set at $18 a week, and the minimum remains at $6. The percentage in lump-sum awards for disability partial in character but permanent in quality was increased from 50% to 60%. (Sec. 10c). The time limits for computing the amounts remain the same as was provided by the 1917 law. (See Chapter IV). A schedule for hernia is added to the list. The compensation for hernia is 60% of the average weekly wages during twelve weeks. (Sec. 9c).

Commutation of Award:

At any time before the final payment of compensation has been made, the employee may notify the employer and apply to the Commission for a lump-sum payment on the grounds of insecurity of his award. The employer may stay the proceedings by giving a certificate of an insurance company or a bond guaranteeing his payments. Otherwise, a notice will be filed in court by the Commission and the court will award judgment upon ten days notice. The amount will be ninety-five per cent of all payments due and prospectively due. (Sec. 29).

At any time after six months, the employer may redeem his liability by payment of ninety-five per cent of future payments due. The amount must be approved by the Commission. Upon payment, the employer is entitled to a written release. (Sec. 31).

The award may be modified, at any time before final payment is made, by application of either party to the Commission. The Commissioner will re-examine the award. The following facts will be considered reason for cancellation or modification: Fraud in representation; inadequacy or excessiveness; refusal of workman to submit to examination; return of employee

to work; departure of workman or dependents from the United States or Canada. (Sec. 28).

Garnishment:

The same provisions exempting awards from all attachments apply in the 1927 Law as were provided in the 1917 Law.

Security of Payments:

Previous to the 1927 Law any insurance of payments by the employer has been entirely optional. A forward step is taken by this act when it requires that every employer shall secure compensation to his employees by insuring in one of the following ways: (1) He may insure his liability with a commercial insurance company authorized for workmen's compensation insurance in Kansas; or (2) he may show to the Commission proof of his financial ability to meet his compensation payments. (Sec. 32).

A mutual insurance plan may be substituted with the agreement of the employees and the approval of the Commission. If the employees contribute to such a plan, they must receive additional benefits equal to their contributions. If such a plan is substituted for the workmen's compensation law, the employer is liable only under that plan. (Sec 45).

The State Superintendent of Insurance makes all rules of procedure for such plans. (Sec. 49).

All companies who wish to carry this class of insurance must file with the Commissioner a classification of risks and premiums. The Commissioner issues a uniform classification which is valid against all companies. (Sec. 57).

The policies of the insurance companies must be in accord with the compensation law. The insurer agrees to accept all provisions of the act. (Sec. 56). The Commissioner of Insurance has the power to regulate the required reserves of the insurance companies. (Sec. 58). If, at any time, the companies fail to meet the requirements or violate the provisions of the law, their license will be revoked. (Sec. 60). Delay in payment of compensation is a sufficient ground for revoking the license.

Reports:

An additional provision is included in the 1927 law that refers to employers not subject to the act, as well as those subject to it. All employers must report accidents of which they have knowledge within seven days to the Commission; provided, that the accident is serious enough to cause loss of time for

more than the remainder of the day or shift. In case of subsequent death, a supplemental report is required. The penalty for failure to observe this provision is a maximum of $500 for each offense. The report cannot be used as evidence. (Sec. 54).

Operation of the Law:

At the present time statistics to show the success of the new law are not available. The Public Service Commission has issued a partial report covering in a small way the administration of the law during the first six months after enactment. This is reproduced herewith in summary.

The total number of accidents reported for the period from July 1, 1927 to January 1, 1928 is 6,167, of which 335 were not within the scope of the act.

Of all the accidents which are within the scope of the law, fifty-four and five-tenths per cent, or 3,189 cases are compensable. Within the short time allowed after notice of the accidents, sixty-five per cent of the cases (2,075) have been placed in the process of settlement. Final receipts have been filed in 1,691 cases. Of this number only 1,291 show medical and hospital attention paid in the sum of $39,649.94, or an average of $30.71 per case.

The average weekly wage in the compensable cases was $24.92; in the cases not compensable, $26.73. This makes a general average weekly wage of $25.83.

The payments made in the cases where final receipt has been received are as follows:

Type of accident	No. final receipts	Amt. of compensation	Amt. of medical, burial, etc.
No time lost	53	$ 70.68	$ 312.65
Not compensable	323	3,004.98	2,683.45
Compensable	1,315	$138,676.86	36,653.84
Totals	1,691	141,752.52	39,649.94

The accidents reported under the act are classified as follows:

Temporary partial and temporary total	5,668
Fatal	41
Permanent total	1

Permanent partial

Leg	1	Great Toe	2
Foot	1	Any two Toes	3
Eye	9	Loss hearing, one ear	1
Thumb	7	Hernia	27
1 Finger	58	Total	122
2 Fingers	11		
3 Fingers	1		
Thumb and Finger	1		

Grand Total 5,832

The administration of the law gives every reason to believe that it will result in a system free from delay and unnecessary costs. It deals liberally with the injured workman and his dependents, fairly with the employer, and justly with the State.

CHAPTER VII

COMPARISON OF THE KANSAS LAW WITH THE MODEL LAW AND THE LAWS OF OTHER STATES

As a conclusion to the study of workmen's compensation in Kansas, it is desirable to see how Kansas ranks with the development made by other states. The American Association for Labor Legislation has compiled a law known as the Model Law. The purpose of the compilation is to extend legislation in the states which do not have it and to act as a stimulus in perfecting the laws which already exist. As a final aim, it is hoped that the standards proposed by them will aid in securing uniform legislation among the States.

To facilitate comparison, the standards proposed by the Association on each division of the law is printed first. This is followed by the Kansas provision on each point. Finally a digest of the laws of the other states is submitted to show how the states measure up to the standards set by the Association.

A. Scale of Compensation:

The American Association for Labor Legislation regards the scale of payments as the most important feature of the system. The scale of compensation

should provide for "the expense of all necessary medical attendance and for the payment of such a proportion of wages to the victim of the injury during his incapacity, or to his dependents if he is killed, as will provide for the resulting needs and yet not encourage malingering." The following scale is submitted to conform to these requirements and is suggested as the lowest that should be inserted in any compensation law.

A. (1) Medical Attendance:

Aside from humanitarian considerations the employer should, in the interest of economy and efficiency, be required to furnish all necessary medical, surgical, and hospital services and supplies as determined by the Accident Board.

In Kansas the employer must pay (on demand) reasonable expenses (physician, hospital, medicine, nursing, crutches, etc.) for a period of sixty days provided the amount does not exceed $100, except in extreme cases, the commission may require additional aid in an amount not to exceed $100. If the employer refuses, the employee can secure a physician and the employer will be held liable. Furthermore, if the employer's physician is unsatisfactory to the workman

the Commission may appoint another one.[34]

All the acts provide medical attendance. In California, Connecticut, Hawaii, Idaho, Illinois, Louisiana, Maryland, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Porto Rico, Utah, Washington, West Virginia, and Wyoming, and under the federal law for government employees, such services and supplies are to be furnished as long as needed subject to approval of the Accident Board. In Alaska, Arizona, California, Connecticut, Hawaii, Idaho, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Porto Rico, Texas, Virginia, Washington, and Wisconsin, and under the federal law, the amount of such service and supplies is the sum required for complete cure, subject to the Board's approval. Other states, although arbitrarily limiting either the period or the amount of such services and supplies, permit an appeal to the Board for their extension if the circumstances warrant.

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[34] Laws of Kansas, 1927, Chapter 232, Section 10a.

A. (2) Waiting Period:

No compensation should be paid for a definite period--to be not less than three nor more than seven days--at the beginning of disability.

The waiting period in Kansas is seven days. The employer is not liable for any injury which does not disable the workman for a period of at least one week from earning full wages.[35]

In Alaska, Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, Wyoming, and Porto Rico, and under the federal law, the waiting period is as here recommended. In Oregon and South Dakota there is no waiting period.

A. (3) Compensation for Total Disability:

The disabled workman should receive during disability sixty-six and two-thirds per cent of wages; compensation not to be more than $25 or less than $8

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[35] Laws of Kansas, Chapter 232, Section 1a.

a week, unless his wages are less than $8 a week, in which case compensation should be the full amount of his wages before his disability. If he is a minor, he should, after reaching twenty-one, receive sixty-six and two-thirds per cent of the wages of able bodied men in the occupation group to which he belonged.

Compensation for total disability in Kansas begins at the end of the first week and consists of sixty per cent of the employees average weekly earnings, the minimum being $6, the maximum $18. Payments cannot be extended over a longer period than eight years. Payments for medical aid must be in addition to the regular compensation. In case the disability is temporary total and followed by temporary partial disability, compensation consists of sixty per cent of the difference between average weekly earnings before and the average wages during partial disability. This covers a period of four hundred fifteen weeks.[36]

All the acts except those of Washington and Wyoming base disability compensation on a percentage of wages rather than on a flat rate regardless of the wages.

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[36] Laws of Kansas, 1927, Chapter 232, Section 10c.

The percentage of wages here recommended is the same as in Maine, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, West Virginia, and in the federal law. Arizona, California, Illinois, Kentucky, Louisiana, and Wisconsin provide sixty-five per cent; Alabama, Hawaii, Iowa, Michigan, Nevada, Pennsylvania, Texas, and Utah provide sixty per cent, while Idaho, Indiana, and South Dakota, provide fifty-five per cent.

In Arizona, California, Colorado, Idaho, Illinois, Maryland, Minnesota, Missouri, Nebraska, Nevada, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, and West Virginia, and under the federal law compensation for total disability is payable during the continuance of the disability.

The fact that the injured employee is a minor is recognized in fixing compensation in California, Colorado, Connecticut, Illinois, Iowa, Maryland, Massachusetts, Missouri, New York, North Dakota, Ohio, Oklahoma, Texas, Utah, and Wisconsin and under the federal law.

A. (4) Compensation for Partial Disability:

The workman who is only partially disabled should

receive a percentage of his wages proportioned to the degree of physical disability (taking into account age and occupation), and subject to readjustment only on account of changes in extent of disability; compensation not to exceed $25 a week, with provisions for minors, and for workmen earning less than $8, similar to those in the case of total disability. Awards for permanent partial disability should be in addition to total disability compensation paid during the healing period.

The compensation begins at the end of the first week in Kansas, payment to consist of sixty per cent of the average weekly earnings, the maximum being $19 and the minimum $6 weekly, for a maximum period of 415 weeks. In case of a second injury, resulting in total permanent disability, the payments must equal the difference between the amount provided by schedule and the amount for total disability. Where temporary partial disability follows temporary total disability, the award is 60% of the wages before the accident and the wages earned during partial incapacity. The minimum of $6 does not apply in this latter case.[37]

For partial disability which is permanent there

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[37] Laws of Kansas, 1927, Chapter 232, Section 9c.

is no payment during the first week but thereafter in a lump-sum as provided in the schedule, minimum compensation being $6 weekly; maximum $18, payable in periods.[38]

In case of second injury Illinois, Minnesota, New Jersey, New York, Ohio, Oregon, Utah, West Virginia, and Wisconsin pay out of a special fund any compensation in excess of that for which the second injury by itself would make the employer liable. Massachusetts and North Dakota have adopted the same principle through somewhat less adequate legislation.

A. (5) Compensation for Death:

In case of death, the employer should be required to pay a sum not exceeding $150 for funeral expenses, in addition to any other compensation.

The Kansas Compensation law in case of death provides; (1) in the instance that the dependents are totally unable to support themselves, three times the average yearly earnings, maximum being $4000, the minimum $1400; (2) if they are only partially dependent, such proportion of the foregoing as may be be agreed upon or determined to be proportionate

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[38] Laws of Kansas, 1917, Chapter 232, Section 10c.

to the degree of dependency which is determined by the Commission in the case of partial dependence; (3) if there are no dependents only a reasonable amount should be granted to cover the expenses of medical attendance and burial, involving a maximum of $200.

All the laws except those of Alaska, Illinois, Maine, Maryland (in case decedent's estate is large enough to pay such expense) Massachusetts, New Hampshire, Oklahoma (which cannot constitutionally compensate for death), Porto Rico, Rhode Island, South Dakota, and Texas provide funeral expenses in all cases of death whether or not there are dependents. The maximum limit is $200 in Idaho, Maine, Michigan, New York, Rhode Island, and Wisconsin. In Arizona, Alaska, California, Illinois, Iowa, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Dakota, Ohio, South Dakota, Utah, Virginia, Washington, West Virginia, and Wyoming a maximum allowance of $150 is made.

The compensation for a widow if living with the decedent at the time of his death, or if dependent, should be thirty-five per cent of his wages until

her death or remarriage, with a lump-sum on remarriage equal to two years' compensation.

The Kansas law makes no separate provision for widows, but the section dealing with compensation for dependents in case of death is applicable.

The method of compensation for cases of death recommended in this and succeeding paragraphs is substantially the same as in Alabama, Arizona, Delaware, Hawaii, Idaho, Louisiana, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Tennessee, and Vermont, and under the Federal law. The provision for a lump-sum payment to the widow on remarriage is adopted in Arizona, Colorado, Maryland, Minnesota, Nevada, New York, North Dakota, Oregon, Pennsylvania, Utah, Washington, and West Virginia.

If living with the decedent at the time of her death and dependent upon her support, the widower should receive thirty-five per cent of her wages, or a proportionate amount if his dependency is only partial, to be paid until his death or remarriage. In addition to the compensation provided for the widow and widower, fifteen per cent should be allowed for each child under eighteen years of age not to

exceed a total of sixty-six and two-thirds per cent for the widow or widower and children. Compensation on account of a child should cease when it dies, marries, or reaches the age of eighteen years.

In case children are left without any surviving parent, twenty-five per cent should be paid for one child under eighteen, and fifteen per cent for each additional such child, to be divided among such children share and share alike not exceeding a total of sixty-six and two-thirds per cent. Compensation on account of any such child should cease when it dies, marries, or reaches the age of eighteen.

For such class of dependents as parents, brothers, sisters, grandchildren, and grandparents, twenty-five per cent should be paid for one wholly dependent, and fifteen per cent additional for each person wholly dependent, divided among such wholly dependent persons share and share alike, and a proportionate amount (to be determined by the Accident Board) if dependency is only partial, to be divided among the persons wholly or partially dependent according to the degree of dependency as determined by the Accident Board. These percentages should be paid in cases where there is no widow, widower, or

child. In other cases members of this class should receive as much of these percentages as when added to the total per cent, payable to the widow or widower or child, will not exceed a total of sixty-six and two-thirds per cent. Compensation to members of this class should be paid only during dependency.

Compensation for alien non-resident dependents should be placed on the same footing as other dependents.

Kansas allows aliens the same privilege for compensation under the Model Law.

In Alabama, Hawaii, New Mexico, and South Dakota, alone are alien non-resident dependents expressly excluded from compensation. In Arizona, Michigan, Minnesota, North Dakota, Ohio, Tennessee, Texas, and Wisconsin, and in part, in Alaska, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Iowa, Kentucky, Maine, Maryland, Montana, Nebraska, Nevada, New York, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington, West Virginia, and Wyoming, they are expressly included. In other States they are apparently included in the absence of any reference to them.

A. (6) Commutation of Periodical Payments:

If the beneficiary is or is about to become a

non-resident of the United States, or if the monthly payments to the beneficiary are less than $5 a month, or if the Accident Board determines that it would be to the best interests of the beneficiary, the employer should be permitted to discharge his liability for future payments by the immediate payment of a lump-sum equal to the present value of all the future payments computed at four per cent true discount, computed annually. For this purpose the expectancy of life should be determined according to a suitable mortality table, and the probability of the happening of any contingency such as marriage, or the termination of disability, affecting the amount or duration of the compensation, should be disregarded.

In Kansas at any time before final payment of compensation, the employee may notify the employer and apply to the Commission for lump-sum payment (ninety-five per cent of payments due or prospectively due) on grounds of insecurity and the employer may stay proceedings only by a certificate of an insurance company or by his bond. Otherwise a notice will be filed in court by the Commission and the court will award judgment upon ten days' notice. (Sec. 29).

After six months the employer may redeem his liability by a payment of ninety-five per cent of future payments. The amount is to be determined by agreement or settled by the Commission.[39]

Substantially similar provisions are found in nearly all States and in the federal law.

B. Employments to be Included:

It is believed that sufficient progress has now been made in public education on the problem, and in the development of efficient and economical machinery for insuring the employer against his compensation liability, to justify the inclusion in the system of all employments. The only exception which should be made is of casual employees in the service of employers who have only such employees, and who therefore cannot fairly be required to carry compensation insurance policies. Such policies, on payment of a small additional premium, are now drawn so as to embrace casual as well as regular employees. No serious burden is therefore entailed on employers, even of domestic servants in making them liable to pay compensation to casual employees.

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[39] Laws of Kansas, 1927, Chapter 233, Sections 28-31.

Those occupations covered by the Kansas Act are railroad, factory, mine, quarry, electric building, or engineering work, laundry, natural gas plants, county and municipal work, motor transportation lines and all employment where processes necessarily use explosives or inflammable material. These are all considered as hazardous. Agricultural work is declared non-hazardous. (Sec. 2).

When less than five men are employed for a period of time less than one month at time of accident the law does not apply. However, an employer with less than five men may elect to come within the act provided the employee does not "elect not to" come within the act. The provision applies to mines and building work regardless of the number employed or the period of time employed.[40] The act applies to those injuries sustained outside the State where the contract of employment was made within the State, unless the contract provides otherwise specifically.[41]

Farm labor and domestic service are exempted from

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[40] Laws of Kansas, 1927, Chapter 232, Sections 5-7.

[41] Laws of Kansas, 1927, Chapter 232, Section 6.

the operation of the act in nearly all the States, either expressly or indirectly.

Casual employees are excluded either in whole or in part by most State laws.

C. Injuries to be Included:

Compensation should be provided for all personal injuries in the course of employment, and death resulting therefrom within six years, but no compensation should be allowed where the injury is occasioned by the wilful intention of the employee to bring about the injury or death of himself or another. The act should embrace occupational diseases which, when contracted in the course of employment, should be considered personal injuries for which compensation is payable.

Under the Kansas law those injuries covered are personal injuries arising by accident in the course of employment unless (1) workmen are not disabled for at least one week from full wages; (2) it is proved that the workman deliberately caused the injury, either by his failure to use guard or protection furnished, by breach of statutory regulation, or intoxication.[42]

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[42] Laws of Kansas, 1927, Chapter 232, Section 1.

The principle of limiting the time within which death must occur in order to form a basis for compensation is found in Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maryland, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Pennsylvania, Porto Rico, Utah, Vermont, Virginia, and West Virginia, and under the federal law.

The principle of excepting injuries caused by the willful intention of the employee is found in all States except Connecticut, Illinois, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, and Wyoming.

Occupational diseases are included as personal injuries entitling the employee to compensation in California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New York, North Dakota, Ohio, Porto Rico, and Wisconsin and under the federal law.

D. Other Remedies than Those Provided by the Compensation Act:

One of the weightiest arguments against the outworn system of employers' liability is that it causes vast sums of money to be expended in law suits

that should be used in caring for the victims of accidents. To avoid this waste the compensation provided by the act should be the exclusive remedy. If the employer has been guilty of personal negligence, even going to the point of violating a safety statute, his punishment should be through a special action prosecuted by the State factory inspection bureau. Likewise, if he has failed to insure, he should be penalized by being made subject to a penal action prosecuted by the accident board and by increasing his liability for compensation.

The Kansas Act provides that the workmen's compensation law is the only remedy where both the employer and the employee have elected to come under the act.

Suits for damages are not permitted under any circumstances in Alabama, Alaska, Colorado, Hawaii, Idaho, Louisiana, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, Vermont, Virginia, Wisconsin, and Wyoming.

E. Security for Payment of Compensation Awards:

The supreme tests of a compensation system are, first, the incentive provided for reducing accidents to the utmost, and, second, the promptness and

certainty with which compensation claims are met. The strongest incentive toward prevention results from imposing the whole expense of compensation upon the employer. The irregularity and uncertainty of accidents, however, make this policy inexpedient for small employers with limited financial resources. Security can only be attained through some system of insurance. Employers should, therefore, be required to insure their compensation liability.

In Kansas the employer must secure compensation to his employees; either by insuring compensation with an insurance company authorized for workmen's compensation by the Commission; or, by showing to the Commissioner proof of his financial ability to meet compensation contingencies. (Sec. 32). A mutual scheme of insurance may be substituted with the agreement of the employees and the approval of the Commissioner and the Attorney-General. (Sec. 45).

Alabama, and Alaska are the only States which do not require in some form or other the employer to secure the payment of compensation either by insurance or by giving of a bond.

In accordance with the plans of insurance at present provided for, employers may either:

(1) Maintain their own insurance fund subject to the approval of the Accident Board or administrative authority; (Massachusetts, Nevada, North Dakota, Oregon, Porto Rico, Texas, Washington, and Wyoming do not permit employers to carry their own insurance); (2) Insure in a Mutual Association authorized to insure compensation liability. (Insurance in a mutual association is permitted in most states, including Arizona, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and Wisconsin); (3) Insure in a State Insurance Fund managed by the Accident Board upon the same principle and subject to the same general requirements as those governing mutual insurance associations. (State insurance is authorized in Arizona, California, Colorado, Idaho, Maryland, Michigan, Montana, Nevada, New York, North Dakota, Ohio, Oregon, Pennsylvania, Porto Rico, Tennessee, Utah, Washington, West Virginia, and Wyoming.) (4) Insure in a commercial company, such companies to be

subjected to the most rigid regulation to guard against insolvency, to insure just settlement of claims, to prevent wasteful practices and exorbitant rates, and to eliminate unfair competitive methods. (Insurance in commercial companies is not allowed in Nevada, North Dakota, Ohio, Oregon, Porto Rico, Washington, West Virginia, and Wyoming, and sentiment is rapidly developing in favor of such exclusion elsewhere.)

F. Organization of Accident Board:

It is essential to the successful operation of the compensation system that an Accident Board be created. This board should consist of three or five members appointed by the Governor, with the consent of the Senate. The board should have power to employ necessary assistants. Its members should be required to devote their entire time to its work and should not be permitted to carry on any other business or profession for profit. The cost of administration of the compensation law should be equitably distributed among the insurance carriers.

The administration of the law in Kansas is placed in the Public Service Commission. The Chairman of Labor is named as Commissioner of Compensation. He

is given two assistants, with powers to appoint more, and they comprise the executive committee with final powers and authority. This may be compared to the Accident Board suggested by the Association.

Accident boards are provided in all the States, except Alabama, Alaska, Louisiana, New Hampshire, New Mexico, Rhode Island, Tennessee and Wyoming.

G. Procedure for Settlement of Compensation Claims:

Provision should be made for the determination of all claims for compensation, either by the Accident Board, or, if the number of claims be large, by one member of the Board or an authorized deputy. A decision by a member or deputy should be conclusive, unless appeal therefrom is taken to the entire Accident Board within a specified time. The Accident Board's disposition of the case should be final and conclusive unless appeal therefrom is taken within a specified time. Appeals from decrees of the Accident Board should not be allowed, except on questions of law, and should be carried direct to the highest court.

In Kansas the amount may be settled by agreement or by the existing arbitration committee. If agreement fails, and no committee of arbitration exists, the Commission has the authority to settle the award.

Appeal must be made within ten days, and to the District Court.[43]

The procedure here recommended was adopted in New York by amendment of the law in 1919 after an investigation which showed frequent and large underpayments of compensation resulting from an earlier amendment permitting direct settlement.

H. Report of Accidents:

The bill should direct the administrative board to use the Standard Accident Reporting Blank of the American Association for Labor Legislation, now in use for about half the industrial population of the country, requiring full and accurate reports of all industrial accidents as a basis for computation of future industrial accident rates and for future safety regulations to decrease or prevent accidents.

In Kansas notice must be given by the employee to the Commission. The Commission notifies the employer. Unless place of hearing is waived the hearing is held in the county seat of the county in which the accident occurred. A standard form of report is furnished by the Commission.

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[43] Laws of Kansas, 1927, Chapter 232, Sections 21 & 22.

I. Rehabilitation:

Restored earning power is of more importance than distress relieved. The administrative board should therefore be authorized to encourage, co-operate with, or conduct enterprises for the re-education and rehabilitation of injured persons.

The statute of Kansas fails to make definite provision for this very important feature, but forty states do make provision for aiding industrial cripples to secure re-training, re-education, or re-employment.

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