

New Zealand.



ANALYSIS.

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1882, No. 20.

AN ACT to extend and regulate the Liability of Employers to make Compensation for Personal Injuries suffered by Workmen in their Service. Title.
[13th September, 1882.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Employers' Liability Act, 1882." Short Title.

2. In this Act,—

- Interpretation.
- (1.) The expression "person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour:
- (2.) "Employer" includes a body of persons, corporate or incorporate, and the Governor or any Minister acting for or on behalf of Her Majesty, or Her Majesty's Government within the colony:
- (3.) "Workman" does not include a domestic or menial servant, but, save as aforesaid, means a railway servant, and any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise employed in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a con-

tract of service or a contract personally to execute any work or labour.

3. Where, after the commencement of this Act, personal injury is caused to a workman—

Compensation for personal injury to workman arising—
From defect in ways, works, machinery, or plant ;

From negligence of superintendent;

Or overseers, &c. ;

From default of another workman ;

From negligence of another workman—

may be claimed as though he had not been a workman.

Cases where workmen not entitled to compensation.

Limit of amount of compensation recoverable.

(1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him, whilst in the exercise of that superintendence ; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, where such injury resulted from his having so conformed ; or

(4.) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

(5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, point, locomotive engine, or train upon a railway—

the workman, or, in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer, nor engaged in his work.

4. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases, that is to say,—

(1.) Under subsection one of section three, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to, the negligence of the employer, or of some person in the service of the employer and intrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition :

(2.) Under subsection four of section three, unless the injury resulted from some impropriety or defect in the rules, by-laws, or instructions therein mentioned: Provided that where a rule or by-law has been duly made or approved under or by virtue of any Act of the General Assembly, it shall not be deemed for the purposes of this Act to be an improper or defective rule or by-law :

(3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he knew that the employer or such superior already knew of the said defect or negligence.

5. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated

earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

6. An action for the recovery, under this Act, of compensation for an injury shall not be maintainable, unless notice in writing that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death: Provided always that in case of death the want of such notice shall be no bar to the maintenance of such action if the Judge shall be of opinion that there was reasonable excuse for such want of notice.

Limit of time for recovery of compensation.

7. There shall be deducted from any compensation awarded to any workman, or representative of a workman, or persons, claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty, or part of a penalty, which may have been paid in pursuance of any other Act of the General Assembly to such workman, representative, or persons in respect of the same cause of action; and where an action has been brought under this Act by any workman, or representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has previously been made of any penalty, or part of a penalty, under any other Act of the General Assembly in respect of the same cause of action, such workman, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of the General Assembly in respect of the same cause of action.

Money payable under penalty to be deducted from compensation awarded.

8. (1.) Every action for the recovery of compensation under this Act shall be brought in any Court of competent jurisdiction, but may, with the consent of both parties, be brought in a Resident Magistrate's Court, notwithstanding the amount claimed may be beyond his ordinary jurisdiction; and such Magistrate is hereby empowered to hear and determine any such case.

All cases with consent of parties may be in Resident Magistrate's Court.

(2.) Upon the trial of any such action in a Resident Magistrate's Court, one or more Assessors may be appointed for the purpose of ascertaining the amount of compensation.

Appointment of Assessors to decide amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such Assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a Resident Magistrate's Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in Resident Magistrates' Courts.

Rules for regulating appointment, remuneration, and procedure, &c., of such Assessors, and for consolidating actions under this Act.

9. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

Notice of injury to be given, and may be served by delivery or registered letter.

The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter, addressed to the person on whom it is to be served at his last known place of residence or place of business; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

Service of notice on corporations or public officers.

10. Where the employer is a body of persons corporate or unincorporate, the notice shall be served by delivering the same at, or by sending by post in a registered letter addressed to, the office, or, if there be more than one office, any one of the offices of such body.

Notice and proceedings against the Crown.

Where the employer is Her Majesty, notice may be given in the mode prescribed by Part II. of "The Crown Suits Act, 1881," and notwithstanding anything hereinbefore contained all the provisions of that Act, so far as applicable, shall extend to claims made under this Act upon or against Her Majesty.

Notice not invalidated for want of form.

11. A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Magistrate or Judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.