

WORKERS' COMPENSATION BILL.

MEMORANDUM.

THIS Bill repeals and consolidates all existing enactments as to workers' compensation, and makes a number of amendments, of which the following are the most important:—

1. *Scope of the Bill.*—The claim to compensation is extended to all classes of employees who are engaged in the trade or business of their employer, whatever the nature of that trade or business may be. The only persons excepted are employees whose average remuneration exceeds £5 per week. Servants of the Crown and of local and public authorities (as specified in a Schedule) are also included. Persons engaged in hazardous employments (as defined in a Schedule) are also included, although they are not engaged in the trade or business of their employer.

2. No employer is liable to pay compensation to any relative (as defined in this Bill) who is employed by him. Claims of this sort (made against insurance companies) are the source of much trouble, and do not deserve to be encouraged.

3. *Compensation on Death.*—In the case of total dependency the maximum is increased from £400 to £500. Funeral and medical expenses not exceeding £20 are in every case to be added to the compensation payable.

4. *Compensation for Incapacity.*—The lump sum in lieu of weekly payments is fixed at the present value of the weekly payments that would be received. (The present law contains no definite provision.) Compensation for partial incapacity is fixed at half the loss of wages, just as compensation for total incapacity is and has been half the total wages. Weekly payments are in every case limited to six years. At present all workers permanently incapacitated eventually receive the same aggregate amount, regardless of the amount of their wages, because the same maximum is fixed for all. The new provision makes the total compensation vary with the wages received by the worker at the time of the accident. The maximum sum is raised from £300 to £500.

Certain specific injuries (stated in a Schedule) have fixed rates of compensation allotted to them, as amounting either to total disablement or to some definite proportion of total disablement. This provision will avoid any dispute as to the amount of compensation in these cases, and will also secure substantial compensation for serious injury, even though the immediate result of the injury is a comparatively small loss of wages. The earning-power of a clerk, for example, may be little reduced by the loss of a leg, but he will nevertheless obtain substantial compensation.

The term "average weekly earnings" is defined in accordance with the English Act of 1906.

Additional compensation is awarded to workers permanently injured while under twenty-one years of age, for the present earning-power of such workers does not represent their real loss.

5. *Industrial Diseases.*—Compensation is given for certain diseases incurred in the course of a worker's employment. This is in accordance with the English Act of 1906.

6. *Seamen.*—The benefits of the Act are extended to all seamen engaged in New Zealand ships, whether the accident happens in New Zealand waters or not.

7. *Magistrates' Courts.*—Exclusive jurisdiction in compensation cases is given to the Court of Arbitration, the limited power of Magistrates being taken away. The provisions of the present law on this subject are unsatisfactory, and, indeed, unworkable.

8. *Contracting*.—The present law as to the liability of a principal to the workers employed by a contractor is modified to some extent. The principal is made liable if two conditions are fulfilled:—

- (a.) The contract must be worth at least £20, unless the work to be done is directly a part of the principal's own trade or business; and
- (b.) The accident must happen on premises owned, occupied, or used by the principal.

9. *Declaration of Liability*.—In case of injuries which do not presently cause any incapacity, but which may do so in the future, provision is made for obtaining a declaration of liability, on which compensation may be afterwards assessed.

10. *Costs*.—Provisions are made for the limitation of legal costs in proceedings for compensation.

11. *Contracting out of the Act*.—Schemes of insurance between an employer and his workers in lieu of the benefits of the Act are abolished.

12. *Employers' Liability Acts*.—These Acts are repealed on the ground that they are now superfluous and a cause of complexity and unnecessary litigation. Under the Bill a worker has two remedies:—

- (a.) If he can prove personal negligence against his master, he can sue at common law for damages:
- (b.) Whether the master is negligent or not, the servant can sue for compensation under this Act.

But he cannot sue his employer for damages merely because of the negligence of a fellow servant.

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WORKERS' COMPENSATION.

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A BILL INTITULED

AN ACT to consolidate and amend the Law with respect to Compensation to Workers for Injuries suffered in the Course of their Employment. Title.

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

1. This Act may be cited as the Workers' Compensation Act, 1907, Short Title. and shall come into operation on the first day of January, nineteen hundred and *eight*.

Interpretation.

2. In this Act, unless the context or subject-matter otherwise requires,—

“Worker” means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work, or otherwise; but does not include any person who is a relative of the employer and dwells in his house, or any person whose average weekly earnings, calculated in accordance with the provisions of this Act exceed *five* pounds: 5

“Employer” includes any body of persons, corporate or unincorporate, and the legal personal representatives of a deceased employer: 10

“Dependants” means such of the relatives of a worker as were wholly or partially dependent upon his earnings at the time of his death, or would, but for the incapacity due to the accident which caused his death, have been so dependent. 15

“Relatives” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, illegitimate son, illegitimate daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister: 20

“Representative” means an executor to whom probate has been granted, or an administrator, or the Public Trustee lawfully administering the estate of a deceased person:

“The Court” means the Court which by virtue of the provisions of this Act has jurisdiction in the matter referred to. 25

Employer liable to pay compensation.

3. (1.) If in any employment to which this Act applies personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall be liable to pay compensation in accordance with the provisions of this Act. 30

(2.) This Act applies only to the employment of a worker—

(a.) In and for the purposes of the employer's trade or business; or

(b.) In any hazardous occupation, whether for the purposes of the employer's trade or business or not. 35

(3.) A hazardous occupation means, for the purposes of this Act, any of the occupations mentioned in the *First* Schedule hereto.

No liability if worker disabled for less than one week.

4. The employer shall not be liable under this Act in respect of any injury which does not disable the worker for a period of at least one week from earning full wages at the work at which he was employed. 40

No liability where injury due to misconduct.

5. The employer shall not be liable under this Act in respect of any injury which is attributable to the serious and wilful misconduct of the worker injured.

Amount of compensation.

6. Where the death of the worker results from the injury, the amount of compensation payable under this Act shall be as follows:— 45

(a.) If the worker leaves any dependants wholly dependent upon his earnings at the time of the accident which caused his death, the compensation shall be a sum equal to one hundred and fifty-six times his average weekly earnings, or the sum of two hundred pounds, whichever of these sums is the larger, but not exceeding in any case *five* hundred pounds. 50

5 (b.) If the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of the accident which caused his death, the compensation shall be such sum, not exceeding in any case the sum payable under the foregoing provisions, as may be determined to be reasonable and proportionate to the injury to the said dependants.

10 (c.) If the worker leaves any dependants wholly dependent upon his earnings and also dependants partially dependent upon his earnings at the time of the accident which caused his death, the amount of compensation shall be calculated in accordance with paragraph (a) of this section, but the compensation shall be apportioned between these two classes of dependants in such manner as may be determined to be just and reasonable.

15 (d.) Whether the worker leaves dependants or not, there shall be payable, in addition to the compensation (if any) payable under the preceding paragraphs of this section, a sum equal to the reasonable expenses of his medical attendance and burial, not exceeding *twenty* pounds.

20 (e.) In every case the amount of any weekly payments made under this Act to the worker in respect of the accident which caused his death, and any lump sum paid in lieu thereof, shall be deducted from the amount of compensation payable in respect of his death.

25 7. (1.) Where the worker's total or partial incapacity for work results from the injury, the compensation payable under this Act shall, in the discretion of the Court, be either a lump sum or a weekly payment during the period of his incapacity.

Compensation may be lump sum or weekly payment.

30 (2.) In exercising its jurisdiction to award a lump sum the Court shall take into consideration the ability of the person liable to pay the same to make compensation in this form.

35 (3.) When a lump sum is awarded by way of compensation under this Act instead of a weekly payment, it shall be a sum equal to the present value at five per centum compound interest of the aggregate of the weekly payments which in the opinion of the Court would probably become payable to the worker during the period of his incapacity, if compensation by way of a weekly payment were then awarded in lieu of a lump sum.

40 (4.) If the incapacity lasts less than two weeks, no compensation shall be payable in respect of the first week.

45 (5.) During any period of total incapacity the weekly payment shall be one-half of the worker's average weekly earnings at the time of the accident, save that such weekly payment shall not be less than one pound, except where the said average weekly earnings are less than thirty shillings.

50 (6.) During any period of partial incapacity the weekly payment shall be one-half of the difference between the amount of the average weekly earnings before the accident and the average weekly amount which the worker is earning or able to earn in some suitable employment or business after the accident.

(7.) Weekly payments shall in no case extend over a longer period than *six* years.

(8.) The aggregate amount of weekly payments shall in no case exceed *five* hundred pounds.

(9.) In fixing the amount of the weekly payment regard shall be had to any payment, allowance, or benefit which the worker may receive from the employer during the period of his incapacity.

Average weekly earnings.

8. (1.) The term "average weekly earnings," as used in this Act, means the average weekly earnings received by the worker during the twelve months preceding the accident, if he has been so long employed by the same employer, but if not, then for any less period during which he has been in the employment of the same employer, but in estimating such average no account shall be taken of any periods during which the worker has been absent from work.

(2.) Where by reason of the shortness of the time during which the worker has been in the employment of his employer, or of the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of his remuneration in accordance with the foregoing provisions of this Act, his average weekly earnings shall be deemed to be the average weekly amount which during the twelve months previous to the accident was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

How earnings computed in cases where two or more employers.

9. Where the worker has entered into concurrent contracts of service with two or more employers under which he works at one time for one such employer and at another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.

Special payments not part of earnings.

10. Where the employer has been accustomed to pay to the worker a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of his earnings.

Compensation for injuries mentioned in Second Schedule.

11. (1.) Notwithstanding anything contained in this Act as to the rate of compensation, compensation for the injuries mentioned in the first column of the *Second* Schedule to this Act shall be assessed in the manner indicated in the second column of that Schedule.

(2.) A member of the body shall for the purposes of that Schedule be deemed to be lost if it is rendered permanently useless.

(3.) Nothing in the said Schedule shall limit the amount of compensation recoverable for any such injury during any period of total incapacity due to illness resulting from that injury, but any sum so received shall be taken into account in estimating the compensation payable in accordance with the said Schedule.

Where injured worker under twenty-one years of age.

12. (1.) Where a worker is at the time of the accident under the age of twenty-one years and his incapacity is permanent, his average weekly earnings shall be deemed to be not less than two pounds per week, and the reduction of his earning-power shall be deemed to be not less than the difference between that sum and the weekly sum which he will probably be able to earn after attaining the age of twenty-one years.

(2.) Nothing in this section shall have the effect of increasing the amount of compensation payable on the death of a worker under the age of twenty-one years.

13. (1.) No agreement between an employer and a worker, whether made before or after the coming into operation of this Act, shall be effective so as to exempt the employer in whole or in part from any liability to pay compensation under this Act for any injury to be suffered by the worker.

Liability affected by agreement.

(2.) Notwithstanding anything in this section contained, an agreement may be made between an employer and a worker, or between an employer and any representative or dependant of a deceased worker, or between such dependants themselves, after the happening of an injury to the worker, for the settlement of any claim to compensation under this Act, or of any question arising with respect to such compensation.

(3.) Any such agreement as is mentioned in the *last preceding* subsection shall be binding on the parties thereto, and any such agreement entered into by the representative of a deceased worker shall be binding on the dependants of that worker.

(4.) Any such agreement as is mentioned in subsection *two* hereof may be made by and shall be binding on a person under the age of twenty-one years, if it is made in writing with the approval of a Magistrate; and, unless the Court or a Magistrate otherwise orders, any money payable to such person under any such agreement may be paid to him, and his receipt thereof shall be a sufficient discharge.

(5.) Nothing in this section shall be so construed as to confer upon the representative of a deceased worker any power to determine the shares in which compensation is to be apportioned between the dependants of that worker.

14. (1.) Except when otherwise expressly provided, all proceedings for the recovery of compensation under this Act, or for the determination of any question as to the distribution of such compensation among dependants, or for obtaining any order or declaration which by this Act a Court is authorised to make, shall be taken in the Court of Arbitration, and not elsewhere.

Proceedings to be in Court of Arbitration.

(2.) Notwithstanding anything in this section contained, proceedings for the enforcement of any lien or charge imposed on any land by virtue of the provisions of this Act shall be taken in the Supreme Court, and not elsewhere.

15. Subject to the provisions of this Act, the procedure in any proceedings taken in the Court of Arbitration by virtue of this Act, and the mode of enforcement of any order or judgment made or given by the said Court by virtue of this Act, and the fees payable in respect of any such proceedings, shall be determined by rules to be made under the authority of this Act by the Governor in Council; and in default of any such rules, or so far as they do not extend, the procedure shall be the same as that of an action in the Magistrate's Court for the recovery of a debt, subject only to such modifications and additions as in the opinion of the Court shall be necessary.

Procedure to be regulated by rules under Act.

16. (1.) In the case of injuries causing the death of a worker, proceedings for the recovery of compensation under this Act shall be taken by the representative of the deceased on behalf of the dependants.

Proceedings in case of death of worker.

(2.) If there is no such representative, or if no such proceedings are taken by him within one month after the death of the worker, the proceedings may be taken by the dependants of the worker or by any one or more of them on behalf of the others.

(3.) When the claim is for medical or funeral expenses, proceedings shall be taken either by the representative of the deceased worker, or by any person who has paid or is liable to pay these expenses, or by any person to whom these expenses or any of them are payable.

(4.) In any such proceeding the Court may order any other parties to be joined as plaintiffs or defendants whose joinder is, in the opinion of the Court, necessary or advisable for doing complete justice in the matter of the proceedings.

Notice of accident
to be given.

17. (1.) No action for the recovery of compensation under this Act shall lie unless notice of the accident has been given as soon as practicable after the happening thereof, and before the worker has voluntarily left the employment in which he was injured; but he shall not be deemed to have voluntarily left the employment in any case where by reason of the accident he was unable to continue in the employment.

(2.) The want of or any defect or inaccuracy in such notice shall not be a bar to the action if the Court is of opinion that the employer has not been prejudiced in his defence or otherwise by the want, defect, or inaccuracy, or that the want, defect, or inaccuracy was occasioned by mistake, absence from New Zealand, or other reasonable cause.

(3.) Notice of an injury shall be in writing, and shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date and place at which the accident happened, and shall be served on the employer, or if there is more than one employer upon one of them.

(4.) The notice may be served by delivering it at or sending it by post in a registered letter addressed to the residence or any office or place of business of the person or company on whom it is to be served.

(5.) The notice if served by post shall be deemed to have been served at the time when it would have been delivered in the ordinary course of post, and in proving the service it shall be sufficient to prove that the notice was properly addressed and registered.

(6.) When the worker is employed by or on behalf of the Crown, the notice shall be served on the Solicitor-General at Wellington.

Action to be
brought within
six months.

18. No action for the recovery of compensation under this Act shall be brought except within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death:

Provided that if any payment has been made by or on behalf of the employer in respect of such injury, an action may be brought at any time within six months after the last of such payments:

And provided also that a failure to commence the action within the time hereby limited shall be no bar to the action if in the opinion of the Court the failure was occasioned by mistake, absence from New Zealand, or other reasonable cause.

Act to apply to
certain seamen.

19. (1.) This Act shall apply to seamen employed on any ship or vessel which is registered in New Zealand, or which belongs to a company incorporated by the laws of New Zealand, or to a company having its principal office or place of business in New Zealand, or to any person or persons whose chief office or place of business in respect of the management of that ship or vessel is in New Zealand.

(2.) This Act shall apply to such seamen as aforesaid whether the accident happens in New Zealand or elsewhere, and whether it happens on board the ship or vessel or elsewhere.

(3.) "Seamen" in this section includes masters, officers, apprentices, and any other persons employed in any capacity on board a ship or vessel.

(4.) Any sum payable by way of compensation under this Act by the owner of a ship or vessel shall be paid in full, notwithstanding anything contained in section two hundred and ninety-five of the Shipping and Seamen Act, 1903.

20. (1.) The exercise and performance of the powers and duties of any local authority shall for the purposes of this Act be deemed to be the trade or business of that authority. Act to apply to employees of local authority.

(2.) The term local authority as used in this section means and includes the bodies named or described in the *Third* Schedule hereto.

(3.) Nothing in this section shall be so construed as to exempt any employer, whether so named or described in the said Schedule or not, from liability in respect of any injury to a worker employed in a hazardous occupation as defined by section *three* of this Act.

20 21. (1.) If a worker contracts any of the diseases referred to in this section, and is thereby disabled from earning full wages at the work at which he was employed, or if the death of a worker is caused by any such disease, and the disease is due to the nature of any employment in which the worker was employed at any time within the twelve Compensation payable for certain diseases.

25 months previous to the date of the disablement, whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease were a personal injury by accident arising out of and in the course of that employment, subject to the provisions hereinafter in this section contained.

30 (2.) The disablement of the worker shall be treated as the happening of the accident.

(3.) If it is proved that the worker has wilfully and falsely represented himself to the employer as not having previously suffered from the disease, compensation shall not be payable.

35 (4.) Subject to the provisions hereinafter in this section contained, the compensation shall be recoverable from the employer who last employed the worker during the said twelve months in the employment to the nature of which the disease was due.

40 (5.) If that employer alleges that the disease was in fact contracted while the worker was in the employment of some other employer, and not while in his employment, he may apply to the Court in which the action is brought to join that other employer as a defendant, and if the allegation is proved, that other employer shall be the employer from whom the compensation is recoverable.

45 (6.) If the disease is of such a nature as to be contracted by a gradual process, any other employers who during the said twelve months employed the worker in the employment to the nature of which the disease is due shall be liable to make to the employer from whom compensation is recoverable such contributions as shall be determined 50

50 by the Court in any action brought for that purpose.

(7.) The amount of the compensation shall be calculated with reference to the earnings of the worker under the employer from whom the compensation is recoverable.

(8.) The employer to whom notice of the death or disablement is to be given shall be the employer who last employed the worker during the said twelve months in the employment to the nature of which the disease was due, and the notice may be given notwithstanding that the worker has voluntarily left his employment. 5

(9.) The diseases to which this section refers are anthrax, lead poisoning, mercury poisoning, phosphorus poisoning, arsenic poisoning, pneumoconiosis (as affecting miners only), and any other diseases which are declared by the Governor, by Order in Council gazetted, to be diseases within the operation of this Act. 10

(10.) Nothing in this section shall affect the rights of a worker or his dependants to recover compensation in respect of a disease to which this section does not apply, if the disease is a personal injury by accident within the meaning of this Act. 15

Limited application
of Act to workers
employed by Crown.

22. (1.) This Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to all persons employed by the Crown, or by any Department of the Government of New Zealand, to whom this Act would apply if the employer were a private person, and if the work in which they were employed were the trade or business of their employer. 20

(2.) All proceedings against the Crown for compensation under this Act shall be taken in accordance with the procedure set forth in the Crown Suits Act, 1881, and in the Court thereby appointed, with any modifications of such procedure rendered necessary by the provisions of this Act or prescribed by regulations made under this Act by the Governor in Council. 25

(3.) Any sum payable by way of compensation under this Act in respect of the injury or death of any person in the employment of the Crown or of any Department of the Government of New Zealand may be paid by the authority of any Minister of the Crown, and without further appropriation than this Act, out of moneys available for the contingent expenses of the Department in which that person was employed; and, save as aforesaid, no such sum shall be payable except out of moneys appropriated by Parliament for that purpose. 30 35

Compensation for
injury in mine, &c.,
to be an equitable
charge upon
employer's interest
in such mine, &c.

23. (1.) When injury happens to a worker in the course of his employment in or about any mine, building, factory, or vessel, the amount of compensation or damages for which the employer is liable in respect of that injury, whether under this Act or independently of this Act, shall be an equitable charge upon the employer's estate or interest in such mine, building, factory, or vessel, and in the plant, machinery, and appliances in or about the same, and in the land on which such mine, building, or factory is situated. 40 45

(2.) This charge shall take effect from the date of the accident causing the injury, notwithstanding that the amount of the employer's liability may not yet have been determined.

(3.) As between themselves all such charges shall have priority according to the dates of the accidents out of which they arise, and in the case of accidents happening on the same day to two or more workers 50

the charges arising therefrom shall rank equally with each other, and shall be deemed to arise at the time when the first of these accidents happens.

(4.) Subject to the provisions of the *last preceding* subsection, every such charge shall have priority over all existing or subsequent mortgages, charges, or incumbrances, howsoever created, other than mortgages, charges, or incumbrances existing at the time of the coming into operation of this Act, but shall have priority over these last-mentioned mortgages, charges, and incumbrances only so far as a charge possessing such priority would have been created by the Acts hereby repealed had they remained in force.

(5.) For the purpose of enforcing any such charge the Supreme Court may, on summons, make such order as it shall think fit either for the sale of the estate or interest which is subject to the charge or for the appointment of a receiver, or otherwise, and any order for sale shall be carried into effect by the Sheriff in the same manner as in the case of a writ of sale, with any modifications that may be necessary or may be provided by regulations made by the Governor in Council in that behalf.

(6.) In this section the term "factory" has the same meaning as in the Factories Act, 1901.

24. (1.) When any employer has entered into a contract with any insurer for an indemnity in respect of any liability to pay compensation or damages to any worker or to the representative or dependants of any worker in respect of any accident, then in the event of the employer dying insolvent, or becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, the amount of that liability, whether already determined or not, shall be a charge upon all insurance moneys which are payable in respect of that liability, or which would have become payable in respect thereof had no such insolvency, bankruptcy, composition, arrangement, or winding up taken place.

Liability to be a charge upon insurance moneys when employer dies insolvent or becomes bankrupt.

(2.) Such charge shall have priority over all other charges or claims affecting the said insurance moneys, and where the same insurance moneys are subject to two or more charges by virtue of this Act, these charges shall have priority between themselves in the order of the dates of the accidents out of which the liability arose, and if two or more accidents happen to different workers on the same day the charges arising out of these accidents shall rank equally between themselves.

(3.) Such a charge shall be enforceable by way of an action against the insurer by the worker or the representative or dependants of the worker in the same manner as if the action was against the employer; and in respect of any such action, and of the judgment given therein, the parties shall to the extent of the charge have the same rights and liabilities, and the Court shall have the same power, as if the action was against the employer.

(4.) Such an action may be brought although judgment has been already recovered against the employer for compensation in respect of the same matter.

(5.) This section shall not apply when a company is wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company.

(6.) Any payment made by an insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of such payment be a valid discharge to the insurer, notwithstanding anything in this section contained. 5

(7.) No insurer shall be liable under this section for any sum beyond the limits fixed by the contract of insurance as between himself and the employer. 10

Act not to affect liability or remedy independent of this Act.

25. (1.) Save as otherwise expressly provided by this Act, nothing in this Act shall affect any civil liability of an employer or any other person which exists independently of this Act.

(2.) Any sum received from any person by way of damages shall be deducted from the sum recoverable by way of compensation under this Act, and any sum received by way of compensation under this Act shall be deducted from the sum recoverable from any person by way of damages. 15

(3.) When judgment has been recovered against an employer by or on behalf of any person for compensation under this Act, such person shall not be entitled thereafter to recover damages against the employer independently of this Act in respect of the same accident. 20

(4.) When judgment has been recovered against an employer for damages independently of this Act by or on behalf of any person, such person shall not be entitled thereafter to recover compensation against the employer under this Act in respect of the same accident. 25

(5.) When any claim against an employer for compensation under this Act or for damages independently of this Act has been settled by agreement, no person bound by that agreement shall be entitled to recover from the employer in respect of the same accident any sum, whether by way of damages or of compensation, other than the amount so agreed upon. 30

Indemnity of employer in certain cases.

26. Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the person by whom the compensation is paid or payable, whether directly or by way of an indemnity under the provisions of this Act, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid. 35

Procedure where action brought independently of this Act.

27. (1.) If, within the time limited by this Act for bringing an action for the recovery of compensation under this Act, an action is brought in any Court of competent jurisdiction to recover damages independently of this Act for injury caused by any accident, and it is determined in this action that the injury is one for which the employer is not liable independently of this Act, the action shall be dismissed, but the Judge or Magistrate of the Court in which the action is tried shall, on the application of the plaintiff made at the time of such dismissal or as soon thereafter as practicable, proceed to determine whether the defendant is liable to pay compensation under this Act; and if he is found to be so liable, the said Judge or Magistrate shall thereupon give judgment for the said compensation as if in an action for the recovery of compensation under this Act, but he shall deduct from the amount of such compensation the costs which in his opinion have been 40 45 50

caused by the plaintiff suing for damages instead of for compensation under this Act.

(2.) For the purposes of such determination of the defendant's liability under this Act, and the assessment of compensation, the said
5 Judge or Magistrate may hear such further evidence (if any) as he thinks fit, as if the hearing of such application were the trial of an action, or may act upon the evidence already given in the trial of the action.

(3.) Any Judge or Magistrate of the Court in which such judgment is given shall have the same powers with respect to that judgment,
10 ment, and with respect to the compensation payable thereunder, as are given by this Act to a Court in which judgment has been given in an action for the recovery of compensation under this Act.

(4.) Save as in this section provided, when an action has been brought against an employer to recover damages for an injury inde-
15 pendently of this Act, and it has been decided in that action that the employer is not so liable, he shall not be liable to pay compensation under this Act either to the plaintiff in that action or to any other person on whose behalf and by whose authority the action was brought.

28. Where the death of a worker happens within twelve months after
20 the accident which caused it, no claim to compensation under this Act by the representative or dependants of such worker shall be barred by any judgment obtained by the worker himself in his lifetime in respect of the injury which caused his death, whether such judgment was obtained under this Act or independently of this Act, or by any settlement or
25 accord and satisfaction made by the worker in his lifetime in respect of his claim to damages or compensation for that injury; but the claim of the representative or dependants of the worker shall be reduced by the amount of all moneys paid or payable by way of damages or compensation under any such judgment, settlement, or accord and
30 satisfaction, or otherwise received by the worker from his employer in respect of his injury.

Claim for compensation in case of death not barred by any judgment obtained by worker in respect of accident causing death.

29. (1.) In any case where any person (hereinafter referred to as the principal) contracts with any other person (hereinafter referred to as the contractor) for the execution of any work by or under the
35 contractor, and the contractor employs any worker thereon, both the principal and the contractor shall be deemed to be employers of the worker so employed, and shall be jointly and severally liable to pay any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

Principal and contractor both deemed employers for purposes of this Act.

(2.) The principal shall be entitled to be indemnified by the contractor against the principal's liability under this section.

(3.) The principal shall not be liable under this section except in cases where the accident happens on, in, or about some building, ship, vessel, land, or premises of which the principal has the occupation
45 or use, or of which some other person is in occupation as the tenant of the principal, or on which the principal has contracted to do the work in connection with which the accident happens.

(4.) The principal shall not be liable under this section unless one of the following conditions is fulfilled:—

50 (a.) The work in connection with which the accident happens is directly a part of or a process in the trade or business of the principal; or

(b.) The contract entered into by the principal is such as to involve a payment by him of not less than twenty pounds for the due
55 and complete performance thereof.

(5.) When the principal and the contractor are jointly and severally liable under this section, judgment recovered against one of them shall not be any bar to an action against the other, except to the extent to which such judgment has been actually satisfied.

(6.) When compensation is claimed from or proceedings are taken against the principal, then in the application of this Act references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom he is immediately employed. 5

(7.) In the case of subcontracts the expression "principal" shall include not only the original principal, but also each contractor who constitutes himself a principal with respect to a subcontractor by contracting with him for the execution by him of the whole or any part of the work; and the expression "contractor" shall include not only the original contractor, but also each subcontractor, and each principal's right of indemnity shall include a right against every contractor standing between him and the contractor by whom the worker was employed at the time when the accident occurred. 10

Apportionment of compensation

30. (1.) Any sum payable by way of compensation under this Act to or on behalf of the dependants of a worker shall, in default of any agreement between the dependants, be allotted among the dependants in such proportions as the Court shall determine. 20

(2.) When there are both total and partial dependants the compensation may be allotted partly to the total and partly to the partial dependants, as the Court shall think fit. 25

(3.) In any case the compensation may be allotted wholly to one or more of the dependants to the exclusion of the others, as to the Court seems fit.

Compensation in case of death to be paid into and applied by Court.

31. In any action for the recovery of compensation payable under this Act to or on behalf of dependants in the case of the death of a worker the Court may order that the amount of such compensation shall be paid into Court; and any such sum so paid into Court shall be invested, applied, or otherwise dealt with by the Court in such manner as the Court in its discretion thinks fit for the benefit of the persons entitled thereto under this Act. 30

Public Trustee to invest in accordance with orders of the Court.

32. Any sum directed in pursuance of this Act to be invested shall be paid to the Public Trustee, who shall deal with all such moneys and the income thereof in accordance with this Act.

Payment to representative.

33. (1.) Subject to any order of the Court to the contrary, any money payable by way of compensation under this Act in respect of the death of a worker may be paid to the representative of the said worker, and his receipt thereof shall be a sufficient discharge. 40

(2.) Compensation payable in respect of medical or funeral expenses may be paid to any person entitled to take proceedings for the recovery of such compensation, and his receipt thereof shall be a sufficient discharge. 45

Lump sum in lieu of weekly payments.

34. (1.) When any weekly payment is payable under this Act by virtue of any judgment, order, or agreement, the Court may at any time, on the application either of the person entitled thereto or of any person liable to pay the same, make an order commuting such payment for a lump sum assessed in accordance with the provisions of this Act. 50

(2.) Where the weekly payment is payable under any judgment or order, the application for its commutation shall be made to the Court by which such judgment or order was given or made.

35. (1.) Where any money is payable under this Act to a person
 5 under the age of twenty-one years or under any other legal disability, the Court may order either that the money shall be paid to that person himself or to any other person on his behalf, or that it shall be paid into Court to be dealt with for the benefit of the person entitled thereto in such manner as to the Court seems fit.

Payment to persons under twenty-one.

10 (2.) Unless the Court otherwise orders, any weekly payment to which a person under the age of twenty-one years is entitled by virtue of this Act may be paid to him, and his receipt thereof shall be a sufficient discharge therefor.

36. (1.) In the case of any injury suffered by a worker which does
 15 not presently cause incapacity, but may cause it in the future, or which may in the future cause more serious incapacity than that which is already caused, he may, within the time limited in this Act for bringing an action for compensation, bring an action against his employer, or against any other person who would be liable for such future incapacity, for a
 20 declaration of liability under this Act; and the Court may in that action make a declaration of such liability, which shall have the effect of a judgment for compensation to be afterwards assessed; and at any time thereafter the worker may apply to the Court to have compensation assessed in pursuance of the said declaration on proof that such incapacity
 25 as aforesaid has resulted from the said injury, and the compensation so assessed shall be payable accordingly as under a judgment of the Court.

Declaration of liability of employer in certain cases

(2.) In the case of any such injury as aforesaid the worker may file
 30 in the Court an admission of liability signed by the employer or other person liable, or by the agent of the employer or of such other person; and such an admission of liability when so filed shall have the effect of a declaration of liability by the Court under the *last preceding* subsection, and proceedings for the assessment of compensation thereunder may be taken thereafter in manner provided by the said subsection; but the
 35 Court may at any time order the said admission of liability to be removed from the file on the ground of fraud, mistake, or any other reason which the Court deems sufficient, and the same shall thereupon cease to have the effect and operation aforesaid.

37. (1.) Any judgment or agreement for a weekly payment of
 40 compensation under this Act may at any time and from time to time, in an action brought for that purpose either by the worker or by the employer or any other person liable to pay the same or to indemnify the employer or any other person against the same, whether by way of insurance or otherwise, be reviewed by the Court; and on such review
 45 the payments may be ended, diminished, or increased, but so that the compensation so awarded is in conformity with the provisions of this Act.

Judgment or agreement for weekly payment may on application be reviewed by Court.

(2.) Every such action for the review of a judgment for a weekly
 50 payment shall be brought in the Court by which such judgment was given.

38. Where, on application being made by any dependant to the Court into which moneys have been paid by way of compensation on

Apportionment of compensation may be varied by order of Court.

the death of a worker, it appears to the Court that on account of neglect of children on the part of a widow, or on account of a variation in the circumstances of the various dependants, or for any other sufficient reason, an order of the Court as to the apportionment amongst the several dependants of any sum paid as compensation, or as to the manner in which any sum allotted to any such dependant is to be invested, applied, or otherwise dealt with, ought to be varied, the Court may make such order for the variation of the former order as in the circumstances of the case the Court thinks just. 5

Cause of action to survive death of person liable to pay compensation.

39. A cause of action for the recovery of compensation under this Act shall survive notwithstanding the death of the employer or other person liable to pay such compensation, and all proceedings under this Act may be begun or continued against the personal representative of such deceased employer or other person. 10

Claim to compensation provable in bankruptcy or liquidation.

40. (1.) A claim to compensation under this Act, whether the amount of the liability has been already determined or not, shall be a claim provable in bankruptcy or liquidation. 15

(2.) In the case of liability to make weekly payments of compensation, the claim to be proved shall be for such lump sum in lieu thereof as shall be assessed in accordance with the provisions of this Act by any Court having jurisdiction in the bankruptcy or liquidation. 20

Injured worker to submit himself for medical examination if required.

41. (1.) Where a worker has given notice of an accident or is entitled to weekly payments under this Act, he shall, if so required by the employer or by any person by whom the employer is entitled to be indemnified, whether by way of insurance or otherwise, in respect of any liability under this Act, or by any other person liable to pay compensation under this Act, from time to time submit himself for examination by any registered medical practitioner nominated and to be paid by the employer or such other person. 25

(2.) If the worker at any time without sufficient justification refuses or neglects to submit himself to such examination, or in any way obstructs or delays the same, his rights under this Act in respect of the accident to which the examination relates shall be suspended until the examination takes place, and shall absolutely cease if he fails without sufficient justification to submit himself for examination within one month after being required so to do. 30 35

(3.) Where a right to compensation is so suspended, no compensation shall be payable in respect of the period of suspension.

(4.) This section shall apply whether the worker is at the time when he is required to submit himself for examination resident in New Zealand or elsewhere, but if he is resident elsewhere than in New Zealand he shall be required to submit himself for examination by a duly qualified medical practitioner of the place where he is resident. 40

Compensation moneys not assignable.

42. No money paid or payable by way of compensation under this Act shall be capable of being assigned, charged, taken in execution, or attached, nor shall any claim be set off against it, nor shall it be assets in the bankruptcy of the person entitled thereto. 45

Costs.

43. The costs of any action or other proceeding under this Act shall be in the discretion of the Court.

Solicitor's claim over compensation to be determined by Court.

44. The solicitor of any person recovering by action compensation under this Act shall not be entitled to claim a lien on or to deduct any amount for costs from any moneys so recovered, except to the extent 50

of such sum as may be determined by the Court on the application of the solicitor made during the action or at any time thereafter.

45. (1.) Every certificate given under section fourteen of the Workers' Compensation for Accidents Act, 1900, shall be deemed to be revoked upon the coming into operation of this Act. Certificates under section 14 of Act of 1900 revoked.

(2.) All moneys, securities, and property held for the purposes of any scheme, the certificate for which is deemed to be revoked by virtue of this section, shall be dealt with in such manner as is agreed upon between the employer and the workers interested in the same, or, in default of any such agreement, as is determined by an award of the Court of Arbitration on the application of the employer or any such worker; and the said award shall have the force and effect of a binding agreement between all parties interested in the said moneys, securities, and property.

46. In the case of the death of a worker who is illegitimate, the same rights of compensation shall exist for the benefit of his mother, or of brothers and sisters by the same father and mother, as if he and such brothers and sisters were legitimate. Compensation in case of death of illegitimate worker.

47. Nothing in this Act shall affect any proceeding for a fine under any Act or the application of any such fine; but if any such fine or any part thereof has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this Act. Act not to affect proceedings for fine under other Act.

48. The Governor may from time to time by Order in Council make such regulations as he thinks fit for the purpose of prescribing or modifying the procedure in any proceedings under this Act, and also for any purpose which he thinks necessary in order to give full effect to the provisions of this Act. Regulations.

49. The Employers' Liability Act, 1882, the Employers' Liability Act Amendment Act, 1891, and the Employers' Liability Acts Amendment Act, 1892, are hereby repealed. Employers' Liability Acts repealed.

50. Section fifty-eight of the Coal-mines Act, 1905, and section two hundred and sixty-seven of the Mining Act, 1905, are hereby repealed. Repeal of mining provisions.

51. Notwithstanding anything in this Act contained, when a contract to perform any work in any gold-mine or coal-mine is let directly to one or more contractors who do not either sublet the contract or employ wages-men, or who, though employing wages-men, actually perform any part of the work themselves, such contractors shall for the purposes of this Act be deemed to be workers. Mining contractors deemed to be workers.

52. The Acts and portions of Acts mentioned in the *Fourth* Schedule hereto are hereby repealed, but shall continue to apply to cases where the accident happened before the coming into operation of this Act. Repeals.

Schedules.

SCHEDULES.

Section 3 (3.)

FIRST SCHEDULE.

HAZARDOUS OCCUPATIONS.

MINING; quarrying; excavation; the cutting of standing timber, including the cutting of scrub and clearing land of stumps; the erection or dismantling of any building; the manufacture or use of any explosive; the charge or use of any machinery in motion and driven by steam or other mechanical power; the driving of any vehicle drawn or propelled by horse-power or mechanical power.

Section 11.

SECOND SCHEDULE.

Nature of Injury.	Ratio of Compensation to that for Total Disablement.
Total blindness ...	Full compensation as for total disablement.
Loss of both hands ...	
Loss of both feet ...	
Loss of a hand and a foot ...	
Loss of one hand ...	80 per cent. of compensation for total disablement.
Loss of one foot ...	60 per cent. of compensation for total disablement.
Loss of one eye ...	30 per cent. of compensation for total disablement.

Section 20.

THIRD SCHEDULE.

LOCAL AUTHORITIES.

County Councils.	Fire Boards.
Borough Councils.	River Boards.
Town Boards.	Drainage Boards.
Road Boards.	Education Boards.
Harbour Boards.	

Section 52.

FOURTH SCHEDULE.

ACTS AND PORTIONS OF ACTS REPEALED.

1900, No. 43.—The Workers' Compensation for Accidents Act, 1900.

1902, No. 61.—The Workers' Compensation for Accidents Act Amendment Act, 1902.

1903, No. 88.—The Workers' Compensation for Accidents Amendment Act, 1903.

1904, No. 54.—The Workers' Compensation for Accidents Acts Amendment Act, 1904.

1905, No. 50.—The Workers' Compensation for Accidents Act, 1905.

1906, No. 58.—The Statute Law Amendment Act, 1906 : Section 10.