

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed as now printed, is transmitted to the HOUSE OF REPRESENTATIVES for its concurrence.
Legislative Council,
31st October, 1898.

Hon. Mr. W. C. Walker.

WORKERS' COMPENSATION FOR ACCIDENTS.

ANALYSIS.

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A BILL INTITULED

AN ACT to amend the Law with respect to Compensation to Workers for Accidental 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. The Short Title of this Act is "The Workers' Compensation for Accidents Act, 1898," and it shall come into operation on a date to be fixed by the Governor by Order in Council gazetted: Short Title.
10 Provided that such Order in Council shall not be made unless and until the Governor is satisfied that the department established under "The Government Insurance and Annuities Act, 1874," is carrying on the business of accident insurance pursuant to statutory authority on that behalf, and is prepared to insure every risk under this Act.

15 2. In this Act, if not inconsistent with the context,—
"Dependants" means such children of a worker, or members of his family, specified in "The Deaths by Accidents Compensation Act, 1880," as at the time of his death were wholly or in part dependent on his earnings: Interpretation.
"Workmen's Compensation Act, 1897" (Imperial),
sec. 7, altered.

20 "Employer" includes any body of persons, corporate or unincorporate:
"Industrial Arbitration Act" means "The Industrial Conciliation and Arbitration Act, 1894":

"Worker" means any person of any age or either sex who, under contract with an employer, whether made before or after the coming into operation of this Act, and whether oral or in writing, expressed or implied, is engaged to do any work or manual labour of any kind, whether technical, skilled, or unskilled, and whether on land, or on any ship or other vessel (of whatsoever kind and howsoever propelled) in any navigable or other waters within New Zealand or the jurisdiction thereof; but does not include persons employed in or about agricultural or pastoral pursuits, or a domestic servant (meaning thereby any person employed for hire or reward to perform household or domestic services, and living as a member of the household in which the services are performed), nor does it include a contractor within the meaning of section *fourteen* hereof: Any reference in this Act to a worker who has been injured shall, where he is dead, include a reference to his legal personal representatives, or to his dependants, or other person to whom compensation is payable.

Application to workers in employment of Crown.
"Workmen's Compensation Act, 1897" (Imperial), sec. 8.

3. This Act shall not apply to workers in the naval or military service of the Crown, but otherwise shall apply to workers in any employment by or under the Crown within New Zealand to which this Act would apply if the employer were a private person:

Provided that all sums payable under this Act by or on behalf of the Crown, shall be payable out of moneys to be appropriated by Parliament.

Cases in which employer not liable.
Sec. 1.

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 two weeks from earning full wages at the work at which he was employed, nor which is proved to be attributable to the serious and wilful misconduct of the worker.

Liability for injuries to workers.
Sec. 1, altered.

5. If, in any employment, personal injury by accident arising out of and in the course of the employment is caused to a worker, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the *First* Schedule to this Act.

Worker may claim compensation under this Act or take independent proceedings.
Sec. 1, altered.

6. In every case where the injury is caused by the negligence, default, or wilful act of the employer, or of some person for whose act or default the employer is responsible, the following provisions shall apply:—

(1.) Nothing in this Act shall affect any civil liability of the employer.

(2.) The worker may, at his option, either claim compensation under this Act, or take the same proceedings as are open to him independently of this Act:

Provided that the employer shall not be liable to pay compensation both independently of and also under this Act, and shall not be liable to pay compensation independently of this Act, except in cases where the liability exists independently of this Act.

Mode of settling questions arising under Act.
Sec. 1, altered.

7. If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act, or as to the amount

or duration of compensation under this Act, the question, if not settled by agreement, shall, subject to the provisions of the *First* Schedule to this Act, be settled as an industrial dispute under the Industrial Arbitration Act: Provided that the worker or any of his

5 dependants may be party to such dispute, and any party to a dispute may appear either personally or by a barrister or solicitor of the Supreme Court, or by an agent duly appointed in writing.

8. If, within the time hereinafter in this Act limited for taking proceedings under this Act, an action is brought to recover compensation independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under this Act, the action shall be dismissed; but the Court in which the action is tried shall, if the

10 plaintiff so chooses, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of taking proceedings under this Act.

Procedure when action wrongly brought independently of Act. Sec. 1.

9. When assessing such compensation under the *last-preceding* section hereof, the Court shall give a certificate as to the compensation it has awarded and as to the deduction for costs, and such certificate shall have the force and effect of an award under the Industrial Arbitration Act.

Certificate as to compensation awarded. "Workmen's Compensation Act, 1897" (Imperial), sec. 1, altered.

10. 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.

Proceedings for fines not affected. Sec. 1, altered.

11. Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable, unless,—

Time within which notice to be given and claim made. Sec. 2.

(1.) 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; nor unless

35 (2.) The claim for compensation with respect to such accident has been made within three months after the occurrence of the accident, or, in case of death, within six months after the time of death:

Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defence by such want, defect, or inaccuracy, or that the same was occasioned by mistake or other reasonable cause.

12. With respect to such notice the following provisions shall apply:—

Form and service of notice. Sec. 2.

(1.) The notice shall give the name and address of the person injured, and shall state in ordinary language the cause and nature of the injury, and the date and locality at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon any one of them.

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- (2.) 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.
- (3.) 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. 5
- (4.) The notice, if served by post, shall be deemed to have been served at the time when the letter containing the same 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. 10
- (5.) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body. 15
- (6.) Where the employer is the Crown, or any departmental officer acting for the Crown, the notice shall be served on the Solicitor-General, at Wellington.

New.

Contracting out under scheme for compensation approved by Board of Conciliation. "Workmen's Compensation Act, 1897" (Imperial), sec. 3, altered.

13. In any case where, on application in the prescribed manner to the Board of Conciliation under the Industrial Arbitration Act, the Board, after taking steps to ascertain the views of the employer and workers, certifies that any scheme of compensation, benefit, or insurance for the workers, whether or not such scheme includes other employers and their workers, is on the whole not less favourable to the general body of workers and their dependants than the provisions of this Act, the following provisions shall apply:— 20

- (1.) The employer may, until the certificate is revoked, contract with any of those workers that the provisions of the scheme shall be substituted for the provisions of this Act, and thereupon the employer shall, as respects the workers with whom he so contracts, be liable only in accordance with the scheme, but, save as aforesaid, this Act shall apply, notwithstanding any contract to the contrary made after the coming into operation of this Act; 30
- (2.) The Board may give such certificate, to expire at the end of a limited period to be specified therein, being not more than five years. 35
- (3.) No scheme shall be so certified which contains an obligation upon the workers to join the scheme as a condition of their hiring. 40
- (4.) If, during the currency of the certificate, application is made to the Board by or on behalf of the employer or the workers or a majority of them that the provisions of the scheme are no longer on the whole so favourable to the employers or to the general body of workers and their dependants as the provisions of this Act, or that the provisions of the scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the Board shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate. 45 50

- 5 (5.) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workers, or as may be determined by the Board in the event of a difference of opinion.
- (6.) Every decision of the Board under this section shall, in such manner and on such terms as are prescribed, be subject to review by the Court of Arbitration, whose decision shall be final.
- 10 (7.) For the purposes of this section, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Board or the Court.

15 14. In any case where any person (hereinafter called "the principal") contracts with any other person (hereinafter called "the contractor") for the execution of any work by or under the contractor, and the contractor employs any worker thereon, the following provisions shall apply:—

Liability in cases of contracting or sub-contracting.
Sec. 4, altered.

20 (1.) Both the principal and the contractor shall be deemed to be employers of the worker, and shall be jointly and severally liable to pay to the worker any compensation which the contractor if he were the sole employer would be liable to pay under this Act.

25 (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 work to be executed under the contract, and in which the worker is employed,—

30 (a.) Relates directly to the land, building, vessel, or other property of the principal; or

(b.) Is directly a part of or a process in the trade or business of the principal:

35 Provided that his liability shall be presumed until the contrary is shown.

(4.) In the case of sub-contracts the expression "principal" shall extend to and include not only the original principal, but also each contractor who constitutes himself a principal with respect to a sub-contractor by contracting with him for the execution by him of the whole or any part of the work; and the expression "contractor" shall extend to and include not only the original contractor, but also each sub-contractor:

45 Provided that each principal's right of indemnity shall be a right over against every contractor standing between him and the contractor by whom the worker was employed at the time when the accident occurred.

50 15. 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 worker may, at his option, proceed either at law against that person to recover damages, or against his employer for

Recovery of damages from stranger.
"Workmen's Compensation Act, 1897" (Imperial), sec. 6.

compensation under this Act, but not against both, and if compensation is paid under this Act, the employer paying the same shall be entitled to be indemnified by the said other person.

Claims of worker for compensation or damages in case of bankruptcy of employer. Sec. 5, altered and extended.

16. Where any employer becomes liable, either under this Act or independently of this Act, to pay compensation or damages in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a worker under such liability, then in the event of the employer becoming bankrupt, or making a composition or arrangement with his creditors, or, if the employer is a company, of the company being wound up, such worker shall, by force of this Act, have a first charge upon the sum aforesaid for the amount so due. 5

Provision as to existing contracts. "Workmen's Compensation Act, 1897" (Imperial), sec. 9.

17. Any contract existing at the time of the coming into operation of this Act, whereby a worker relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this Act, be deemed to continue after the time at which the worker's contract of service would determine if notice of the determination thereof were given at the time of the coming into operation of this Act. 15

Regulations. New.

18. The Governor may from time to time make such regulations as he deems necessary for the purpose of prescribing the mode in which claims and questions under this Act may be determined under the Industrial Arbitration Act, and also for any other purpose which he deems necessary in order to give full effect to the provisions and intention of this Act. 20

Repeal.

19. The following enactments, namely, "The Mining Act, 1891," in part, namely, section three hundred and thirty-three, and "The Coal-mines Act, 1891," in part, namely, section fifty-two, are hereby repealed. 25

Schedule.

SCHEDULE.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.

First Schedule, sec. (1).

1. THE amount of compensation under this Act shall be computed and assessed as follows, that is to say,—

(1.) Where death results from the injury,—

(a.) If the worker leaves any dependants wholly dependent upon his earnings at the time of his death, the compensation shall be a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds:

Provided that the amount of any weekly payments made under this Act shall be deducted from such sum, and if the period of the worker's employment has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment:

(b.) If the worker does not leave any such dependants, but leaves any dependants in part dependent upon his earnings at the time of his death, the compensation shall be such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or as, in default of agreement, may be determined on under this Act, to be reasonable and proportionate to the injury to the said dependants: and

(e.) If the worker leaves no dependants, the compensation shall be a sum equal to the reasonable expenses of his medical attendance and burial, not exceeding thirty pounds.

- (2.) Where the worker's total or partial incapacity for work results from the injury, the compensation shall be a weekly payment during the incapacity after the second week not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed one pound ten shillings: Provided that in no case shall the total liability for compensation exceed five hundred pounds.

2. In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the worker before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect of his injury during the period of his incapacity.

"Workmen's Compensation Act, 1897" (Imperial).
First Schedule,
sec. (2).

Conditions.

3. Where a worker has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall cease unless he shall within one month submit himself to such examination. Sec. (3).

4. The payment shall, in case of the worker's death, be made to his legal personal representative, or, if he has no legal personal representative, then to or for the benefit of his dependants, or, if he leaves no dependants, then to the person to whom the expenses are due; and if made to the legal personal representative shall be paid by him to or for the benefit of the dependants or other person entitled thereto under this Act. Sec. (4).

5. Any question as to who is a dependant, or as to the amount payable to each dependant, shall, in default of agreement, be settled as an industrial dispute under the Industrial Arbitration Act. Sec. (5).

6. The sum allotted as compensation to a dependant may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or, in default of agreement, as determined by the Board of Conciliation or Court of Arbitration. Sec. (6).

7. Any worker receiving weekly payments under this Act shall, if so required by the employer, or by any person by whom the employer is entitled under this Act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer or such other person: Sec. (11).

Provided that if the worker objects to an examination by that medical practitioner, or is dissatisfied with the certificate of such practitioner as to his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed by the Governor for the purposes of this Act, and the certificate of that medical practitioner as to the condition of the worker at the time of the examination shall be given to the employer and worker, and shall be conclusive evidence of that condition. Sec. (11).

8. If the worker refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination takes place. Sec. (12).

9. Any weekly payment may be reviewed at the request either of the employer or of the worker, and, on such review, may be ended, diminished, or increased, subject to the maximum above provided. Sec. (13).

10. Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum to be agreed on by the parties, or in default of agreement, to be determined as an industrial dispute under the Industrial Arbitration Act, and such lump sum may be ordered to be invested or otherwise applied as above mentioned.

11. No money paid or payable in respect of compensation under this Act shall be capable of being assigned, charged, taken in execution, or attached, nor shall the same pass to any other person by operation of law, nor shall any claim be set off against the same. Sec. (14).