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THE WORKMEN'S COMPENSATION ACT
IN WISCONSIN
BY C. W. BABCOCK, OF THE MILWAUKEE BAR.

The British Compensation Act of 1906 was the model of American compensation legislation. In consequence of this common ancestry the acts of the various states bear a close family resemblance to each other.

The common law methods of dealing with injuries to employes was felt to be too archaic as well as too fortuitous to meet modern factory conditions. Governor Hughes (In re Rheinwald, 168 App. Div. 425, N. Y., Supp. 598) was of the opinion that "rules of law governing legal liability offend the common sense of fairness." The reason assigned for so complete a change as this involved in the attitude of the law toward a working man's injuries were based on high "conceptions of moral obligations."

Act April 22, 1908, C. 149, 35 Stat. 65.
U. S. Comp. St., 1913, Sections 8657-8665.

As pointed out by Judge Fullerton in State vs. Clausen, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466, in practice this ideal condition very seldom exists.

Workmen's Compensation Acts en bloc may be called a triumph of the science of statistical conjecture and the present writer opines further that the laws will make or break themselves, depending on whether statistics gathered in this field by the various commissions and insurance concerns are wisely interpreted or not. In other words, the injured employe looms large to those closely concerned with the administration of the compensation law, not a little because of his proximity. The ultimate consumer pays the bill and is represented only in the tabulations of the statisticians. The obvious purpose of the act was to distribute the burden. The acts in this country were intended to equalize and distribute this burden of industrial disaster and were not thought of as a step toward health insurance, old age pensions and other parental measures.

The New York Act in 1911 (case of Ives vs. South Buffalo Ry. Co., 201 N. Y. 271) was, however, declared invalid by the Court of Appeals, on the ground that it was a deprivation of property without due process of law to require an employer to make compensation to employes for injuries arising in the course
of employment, unless the injuries are due to some negligence imputable to the employer. "No employer can be compelled to assume a risk which is inseparable from the work of the employe, and which may exist in spite of a degree of care by the employer far greater than may be exacted by the most drastic law."

In *New York Central Railroad Co. vs. White*, 243 U. S. 188 (New York); *Hawkins vs. Bleakly*, 243 U. S. 210 (Iowa); *Mountain Timber Co. vs. Washington*, 243 U. S. 219 (Washington), two of the statutes were unanimously upheld in the third, which presented a varied problem, by a five to four vote. The opponents of the statute argued that it "strikes at the fundamentals of constitutional freedom of contract." Mr. Justice Pitney, who wrote the opinions, said: "We recognize that the statute under review does measurably limit the freedom of employer and employe." "It cannot be supported except on the ground that it is a reasonable exercise of police power." The compensation statute is an exercise of the police power because "The subject matter in respect to which freedom of contract is restricted is the matter of compensation for human life or limb lost or disability incurred in the course of hazardous employment, and the public has a direct interest in this as affecting the common welfare." The whole is no greater than the sum of all the parts and when the individual health, safety and welfare are sacrificed or neglected, the state must suffer. (*Holden vs. Hardy*, 169 U. S. 366, p. 397.)

This statute does not concern itself with measures of prevention, which presumably are embraced in other laws. But the interest of the public is not confined to these. One of the grounds of its concern with the continued life and earning power of the individual is its interest in the prevention of pauperism, with its concomitants of vice and crime. And, in our opinion, laws regulating the responsibility of employers for the injury or death of employes, arising out of the employment, bear so close a relation to the protection of the lives and safety of those concerned that they properly may be regarded as coming within the category of police regulations.

Liability without fault is not a novelty in the law. Quoting from Best, C. J., *Hall vs. Smith*, 2 Bing. 130, Eng. Reprint 265, the effect of the maxim (Respondeat Superior), is bottomed on this principle that "he who expects to derive advantage from an act which is done by another for him, must answer for any in-
jury which a third person may sustain from it.” The provision for compulsory compensation is merely an extension of this doctrine. It cannot be deemed to be an arbitrary or unreasonable application of the principle, so as to amount to a deprivation of the employer’s property “without due process of law.”

This peculiar type of legislation is based on the economic principle of trade risk, as well as upon the humane purposes indicated above, in that personal injuries losses incident to the business are like wages, and upkeep, a part of the cost of production. Mackin vs. Detroit-Timken Co., 187 Mich. 8; 153 N. W. 49. The Workmen’s Compensation Act is a humane remedial enactment which is intended to give vitality to the idea that personal injury losses incident to an employee’s occupation are as much a part of the labor cost of such service as wages paid, and in some practicable way, be so treated. Village of Kiel vs. Industrial Commission of Wisconsin, (Wis.), 158 N. W. 68. The object of the Workmen’s Compensation Act is to minimize personal injury, distress and loss, and throw the burden upon the public as well as on the person injured, recognizing that such loss legitimately enters into the cost of production as much as wages. City of Milwaukee vs. Miller, 154 Wis. 652. The consumer pays the freight. See State vs. Clausen, 65 Wash. 156; 117 Pac. 1101; 37 L. R. A. (N. S.) 466.

Assembly Bill Number 134, now pending in the Wisconsin legislature, proposes to amend the Wisconsin Compensation Act, “The provisions of Sections 2394 to 2394-31, both inclusive, are extended so as to include, in addition to accidental injuries, all other injuries growing out of and incidental to the employment.”

This is a proposal to adopt the intent of the British Act, (6 Edw. c58), 1906: “If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall * * * be liable to pay compensation * * *.”

A close scrutiny of this wording discloses that the British employer responds only to those injuries the result of accidents arising out of and in the course of the employment. That is, industrial accidents, a view that nearly denatures accident, robs it of its suddenness, so that that which injures which comes by way of and in the course of the employment is an industrial accident. This legislation, when adopted, will include occupational
disease, as lead poison, gas sickness, brass poison and the aggra-
vation by and through the employment of other disease. No
sweeping change will result.

Industrial accidents are those accidents caused by, or charge-
able to the industry in which the injured is employed and do not
include injuries caused by accidents which result from the un-
controllable forces of nature in nowise connected with the in-
dustry. For instance, heat prostration was held by the commis-
sion in *Albertina Tank vs. City of Milwaukee*, April 29, 1914,
p. 81, Third Annual Report, Wis. I. C., to be outside of the
scope of our act, "sun stroke, heat stroke and heat prostration
are terms indicating various phases of disability resulting from
effects of heat. One may be overcome by heat from the direct
rays of the sun, or heat rays associated or dissociated with the
sun's rays. The result is similar in either event. Heat pro-
stration is not popularly spoken of as an accident where it comes
from the action of the elements without the agency of man.
When the industry through the agency of man combines with the
elements and produces injury to an employe by his being over-
come with the heat, it may well be said that the injury grows
out of the employment and is accidental. Such has been the
decision of the English courts under the English Compensation
Act.

"We," continues the Wisconsin Commission, "are aware that
the language of the English act differs from the language of
our act, but if we accept the construction of the legislative com-
mittee which drew our act, then we find the meaning of the two
acts in this respect identical. This meaning makes our act con-
sistent and rational. Clearly, the industry may and ought to be
charged with the burdens resulting from the hazards of the in-
dustry itself **.*

"We merely desire to correctly interpret the legislative in-
tent. The legislative committee in its report says that 'compen-
sation shall be paid when the injury grows out of the employes'
employment, it makes no difference who is to blame; it is suffi-
cient that the industry causes the injury'."

And in the *Lindauer O'Connel Company vs. Helena Hoenig,
Lightning case*, decided April 27, 1914, p. 79, Third Annual Re-
port (Wisc. I. C.), to the position of the legislative committee
as here outlined is added, "It would seem that the intent of the
legislature was to compensate injured workmen for injuries re-
sulting from industrial accidents, i.e., accidents which grow out of the hazards of industrial enterprises and are peculiar to such enterprises."

Many things might be considered in an article of this character: What is disease? Distinguish disease from industrial accident. What are the effects upon the malingering of a longer or shorter waiting period? How are the penalty clauses reconciled with the abolition of the assumption "fellow-servant" and "contributory negligence" defenses? (The commission's rulings are all catalogued on p. 87, Sixth Annual Report, but space does not permit.) The big question in each compensation case under the Wisconsin statute is always, "Does the injury come within the perview of the act?"

The personnel of the Wisconsin commission has been very high. The administration of the commission has been a model to the nearby states. It has been a man's job and an endurance test. It has made a tremendous impression on both the employee and the employer, consequently is to be regarded as a successful expedient.

At least twenty-five states have passed the workmen's compensation law. The compensation program is fairly well insulated from other legislation. The experimental stage is past, the future of compensation legislation, as such, in this state is assured. There is nothing in the decisions of any of the courts to indicate that the rulings sustaining this act may be taken to support other legislation thought by some to be "sua generis" of a social economic character or purpose.